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KNOX DAY

THE LAW AND PRACTICE OF TOWN PLANNING

THE
LAW AND PRACTICE
OF
TOWN PLANNING

BY

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PREFACE.

THE object of this work has been to treat of the subject of town planning as comprehensively as is reasonably possible from a legal point of view.

The provisions in the statute book relating to town planning do not occupy a great space, nevertheless the subject is one of considerable magnitude. The reason of this is to be found in the fact that the Legislature has contented itself with stating generally what matters may be dealt with for the purpose of regulating the formation of new building areas, leaving it in the main to the Minister of Health and the Local Authorities concerned to formulate by means of a Scheme the actual provisions which are to govern the development of any particular area. It was no doubt originally contemplated, and indeed the necessary power was given by the Housing, Town Planning, etc. Act, 1909, that a set of general provisions, or separate sets adapted for areas of special character, should be prescribed by the Local Government Board (now succeeded by the Minister of Health) for the purpose of their insertion in all schemes. These general provisions were intended to be framed for carrying out the general objects of town planning schemes and, in particular, so far as the same concern streets and highways; buildings and other structures; open spaces; sewerage and drainage; lighting and water supply. When town planning schemes, however, actually came to be framed, the difficulty of making general provisions which should form part of every scheme doubtless became apparent; and, in fact, although fourteen years have now elapsed since such provisions were authorised

to be made, none have yet been promulgated. All the schemes made up to the present have comprised, and every scheme about to be made is free to contain, special provisions only. However, the experience that the Central Authority has acquired in the making of schemes in the past is now solidified in the form of the Model Clauses, that were issued in February last. These Model Clauses, which are to be found at the end of this work and have been annotated, will, it may be presumed, be consulted in the framing of all future schemes, and will to a large extent be incorporated; but they have this merit, that they need not be slavishly followed, and certainly are not required to be inserted *en bloc* as general provisions, if prescribed, must have been.

Town planning is not only, at any rate from a legislative point of view, a new subject, but also, so far as the making of schemes is concerned, an adolescent one. The schemes already made by no means cover all the matters which may be embraced in a scheme; and this remark applies to the Model Clauses. No doubt as time proceeds town planning schemes will become more and more comprehensive and contain provisions as to matters respecting which the existing schemes and the Model Clauses are silent.

But, although town planning is in the above sense adolescent, it is of course generally known that the subject is considered by the Legislature to be of such national importance that by the Housing, Town Planning, etc. Act, 1919, the councils of all boroughs and of all other urban districts with populations exceeding 20,000 were required within three years (now extended by the Housing, etc. Act, 1923, to six years) of January 1, 1923, to submit to the Minister of Health town planning schemes in respect of all land within their areas with regard to which town planning schemes may be made. From this very important provision it is apparent that it is intended that the provisions of the Town Planning Acts are not merely to be of avail to local authorities who are pleased to utilise them, but that they shall be applied generally by all local authorities within whose areas there is to be found land suitable to be embraced in a town planning scheme.

The above remarks have general reference to the subject of town planning. So far as concerns this work, it is hoped that the manner in which it has been written and compiled, with the table of contents and the index, will readily show the reader what it comprises both generally and in detail. An attempt has been made to deal fully with the statutory provisions. In so doing, a number of points have called for consideration which present the difficulty usually encountered in breaking up virgin soil; and in this connexion the authors can only hope that their interpretations will prove accurate.

Considerable space is occupied by the chapter dealing with the acquisition of land by local authorities for the purposes of schemes. The contents of this chapter are for the most part applicable to other objects than town planning; but, as there are many new provisions respecting the procedure to be followed in the acquisition of land by local authorities and cognate works do not seem to enter much upon this topic, it has been thought proper to treat of the matter at some length in the present book.

The Appendices among other matters contain the model forms that have been issued by the Minister of Health in respect of the making of town planning schemes. As has already been observed, they also comprise the Model Clauses with annotations. In the Appendices will also be found a table summarising the procedure under the Ministry of Health (Town Planning) Regulations, 1921, and another summarising the effect of existing schemes and the Model Clauses.

S. D.

F. C. M.

1, Elm Court, Temple,
August, 1923.

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CHAPTER I.—THE SCOPE OF THE TOWN PLANNING ACTS.

"THE Town Planning Acts" is an abbreviated and convenient expression for use in referring to "the Town Planning Acts, 1909 to 1923," which is the title given to Part II. of the Housing, Town Planning, etc. Act, 1909, Part II. of the Housing, Town Planning, etc. Act, 1919, and Part II. of the Housing, etc. Act, 1923, by s. 25 (4) of the last-mentioned Act. The provisions which are actually comprised in the Town Planning Acts are comparatively few in number, but they refer to many other statutory provisions and the whole, together with the regulations of the Minister of Health made under the Acts, constitute a code of some magnitude.

General object of Acts.—The general object of the Acts is by means of a town planning scheme made as respects any land, which is in course of development or likely to be used for building purposes, to secure proper sanitary conditions, amenity, and convenience in connection with the laying out and use of such land and of any neighbouring lands (Housing, Town Planning, etc. Act, 1909, s. 54 (1)).

The expression "amenity" is a favourite one in connection with town planning; as well it may be, for no doubt the sense of amenity or pleasantness, as the dictionaries define the word, is that which renders the idea of a town planning scheme popularly attractive. The term "amenity" is not only found in the above provision of s. 54 (1) of the Act of 1909, but also in ss. 45 and 59 (2) of the same Act. Section 45 (see p. 152) speaks of land which "forms part of any park, garden, or pleasure ground or is otherwise required for the amenity or convenience of any dwelling-house"; and this would indicate that, where land is to be laid out under a town planning scheme,

provision may properly be made for public parks, gardens, and pleasure grounds. Section 59 (2) of the Act of 1909, in reference to compensation on account of property being injuriously affected by a town planning scheme, provides that—"Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme which, with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the [Minister of Health], having regard to the nature and situation of the land affected by the provisions, considers reasonable for the purpose." This furnishes another aspect of "amenity" in connection with a town planning scheme. Commenting upon s. 59 (2) of the Act of 1909 in the case of *In re Ellis and Ruislip-Northwood Urban District Council*, [1920] 1 K. B. 343, SCRUTTON, L.J. (at p. 370), said: "The word 'amenity' is obviously used very loosely; it is, I think, novel in an Act of Parliament, and appears to mean 'pleasant circumstances or features, advantages.' Wide streets and plenty of air and room between houses seem clearly to be amenities, and a provision securing them by setting back houses to a given line seems to me to be a provision with a view to securing amenity."

However, the words "with a view to securing the amenity of the area included in the scheme or any part thereof" might prove very embarrassing in considering whether a particular provision fell within s. 59 (2), and such words were repealed by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919. But the expression "amenity" as used in s. 54 (1) of the Act with reference to the general object of a town planning scheme must no doubt be given a very broad interpretation. Many of the provisions to be found in the schemes already approved by the Minister of Health or his predecessors, the Local Government Board (see pp. 49, 50 and 265) and in the model clauses recently issued by the Minister of Health (see p. 209) are to be justified on the ground that they secure the amenity of the areas subject to the schemes. Thus, clause 22 of the Birmingham (North Yardley and Stechford) Town Planning

Scheme prohibits advertising which will "interfere with the amenity of the area or any part thereof"; and model clause 39 (see p. 246) has been formulated with a like purpose. The provision of grass margins for streets and the planting of trees, bushes, and shrubs in streets and the prohibition of the erection of factories or the carrying on of manufacturing businesses — matters commonly provided for in schemes — furnish other examples of "amenity" which may properly be considered.

It will be observed that s. 54 (1) of the Act of 1909, in stating the general object of a town planning scheme, not only refers to the land which is directly subject to the scheme but to "neighbouring lands." Regard is to be had in the making of a scheme to the laying out and use of neighbouring lands as well as to that of the land which is the actual subject-matter of the scheme. The result should be that, as successive areas are developed, they should fit into one another and eventually form a harmonious whole.

The procedure.—Town planning schemes may be prepared or adopted by local authorities, but require the approval of the Minister of Health. A scheme when thus approved has statutory effect. See further, p. 37.

The preparation, adoption, and approval of town planning schemes are considered in Chap. II. The following chapter treats of the variation and revocation of such schemes. Chap. IV. deals with the contents of schemes and Chap. V. is concerned with the carrying out and enforcement of schemes.

Land that may be utilised for scheme.—A scheme may be made as respects "any land which is in course of development or appears likely to be used for building purposes" (Housing, Town Planning, etc. Act, 1909, s. 54 (1)). Where "a piece of land already built upon or a piece of land not likely to be used for building purposes" is so situate with respect to "any land likely to be used for building purposes," which is the subject of a scheme, that the general object of the scheme would be better secured by the inclusion of such piece of land, the same may be included accordingly (Housing, Town Planning, etc. Act, 1919, s. 48 and Sched. III.).

The expression " land likely to be used for building purposes " includes land likely to be used for open spaces, roads, streets, parks, pleasure or recreation grounds, or " for the purpose of executing any work upon or under the land incidental to a town planning scheme whether in the nature of a building work or not " (Housing, Town Planning, etc. Act, 1909, s. 54 (2)). In considering whether a work is " incidental to a town planning scheme " regard, no doubt, should be had to the general object of the Town Planning Acts, namely, to secure proper sanitary conditions, amenity, and convenience in connection with the laying out and use of land subject to a scheme and of any neighbouring lands (*ibid.* s. 54 (1)). However, the decision of the Minister of Health as to whether land is " likely to be used for building purposes " or not is final (*ibid.* s. 54 (2)).

The expression " land in course of development for building purposes " is not defined. Such land, it may be assumed, should include land intended to be used for like purposes to those that pertain to " land likely to be used for building purposes." There will accordingly be comprised in " land in course of development for building purposes " land intended to be used for roads and streets, parks and open spaces, in connection with a building estate and other land required for works it is proposed to execute for the benefit of the estate.

Whether or not land is " in course of development " for building purposes may not be always easy to determine. The land may be said to begin to develop when some actual steps are taken to mark out the plots for houses and the lines of roads and the like. The question as to when land begins to develop for building purposes does not, however, seem to be very material for the purpose of a town planning scheme ; for any contention that land, in respect of which some steps have been taken, has not begun to develop can no doubt be met by the answer that at any rate it is " land likely to be used for building purposes " and is therefore amenable to a scheme. The question of more consequence is as to when the " development " of land for building purposes has come to an end so as to exempt it from being embraced in a scheme. As has been observed, " land in

course of development for building purposes " not only includes land on which it is proposed buildings should actually be erected, but land intended for roads and streets and open spaces and parks and for other purposes in connection with the use and enjoyment of the buildings. The Legislature, in speaking of " land in course of development for building purposes," it may accordingly be inferred, were contemplating a building estate as a whole. The levelling of the land, excavating the soil for buildings and the making of roads, are matters of the sort which may reasonably be said to constitute the development of the estate. It is impossible, however, to make any general and precise statement as to when the development of land is completed. Each case must be determined according to its own circumstances. It is apprehended that it is not necessary, for example, that the roads should be completely made or any intended park should be fully laid out before the land can be said to be no longer " in course of development." On the other hand, it seems reasonable that the fact that a road has reached its final form does not necessarily justify its exclusion from a scheme that may properly be made with regard to the estate as a whole.

Where an area comprises a locality to which special architectural, historic, or artistic interest attaches a town planning scheme may be made with respect thereto notwithstanding that the land or any part thereof is already developed (Housing, etc. Act, 1923, s. 21—see p. 175).

Mention may here again be made of the " neighbouring lands " referred to in s. 54 (1) of the Act of 1909—see p. 1. By that section the general object of town planning is stated to be connected with " the laying out and use of the land, and of any neighbouring lands." The term " the land " clearly means the area to which the scheme expressly relates ; whereas the words " any neighbouring lands " refer to lands in the vicinity of such area, possessing features that may be properly taken into account in the planning of the area, but which are not themselves directly subject to the provisions of the scheme.

Authorities concerned in the execution of the Acts.—The local authority entrusted with the preparation or adoption of a

scheme is, in the case of a borough, the borough council and in other cases, the urban or rural district council; and the term "local authority" as used in the Town Planning Acts relates to such bodies (Housing, Town Planning, etc. Act, 1909, s. 65 (1)). In the administrative county of London, which, of course, includes the city of London, the London County Council is the "local authority" (*ibid.* s. 66 (1)). As to the appointment of a joint committee by local authorities desirous of acting jointly in the preparation of a scheme, see p. 10.

As the land embraced in a scheme need not necessarily be within the area of the local authority that prepares or adopts the scheme, it is not always desirable that such local authority should be the authority for carrying out the scheme. The term "responsible authority" is accordingly introduced to denote "the authority who are to be responsible for enforcing the observance of the scheme and for the execution of any works which under the scheme or the Town Planning Acts are to be executed by a local authority" (Housing, Town Planning, etc. Act, 1909, s. 55 (2)). The scheme will state what body is the "responsible authority" (*ibid.*). Where land included in a scheme is in the area of more than one local authority, or is in the area of a local authority by whom the scheme was not prepared, the "responsible authority" may be one of these local authorities, or for certain purposes of the scheme one local authority and for certain purposes another local authority or a joint body constituted specially for the purpose of the scheme. The necessary provisions for constituting a joint body as the "responsible authority" and giving them the necessary powers and duties may be contained in the scheme (*ibid.* s. 55 (3)).

As regards land in the county of London, no scheme may be prepared with respect to the same by any other local authority than the London County Council except with the consent of that body; and the London County Council is to be the "responsible authority" for carrying out a scheme as regards such land unless the council otherwise consents (*ibid.*).

County councils other than the London County Council are in a minor degree concerned with the Town Planning Acts. They are entitled to be heard at inquiries in regard to schemes

respecting lands in their counties (see p. 135); and they may be empowered to act in the place of the councils of smaller boroughs and urban districts and of the councils of rural districts where such councils make default in preparing or carrying out schemes (see p. 55).

The general provisions of the Town Planning Acts relating to the default of authorities in making and executing schemes are contained in Chap. VI.; and those that concern the defrayment of the expenses of local authorities under the Acts and their borrowing powers for the purposes of the Acts in Chap. X.

The Minister of Health, to whom has now been transferred the powers and duties of the Local Government Board, is very much interested in the Town Planning Acts. It is not only his duty to frame very comprehensive regulations for the purposes of the Acts, but all schemes must receive his approval. Chap. IX. relates to regulations made by the Minister, to the determination by him of matters under the Acts and to inquiries by him.

Ancillary matters.—The acquisition of land by local authorities for the purposes of schemes is dealt with in Chap. VII.

The Acts provide for compensation in respect of property injuriously affected by a town planning scheme and for payment to the responsible authority in respect of property increased in value. See Chap. VIII.

An important provision in the Housing, Town Planning, etc. Act, 1919, required the councils of the larger boroughs and urban districts to prepare schemes in respect of all land within the borough or district by 1st January, 1926—now extended to 1st January, 1929, by the Housing, etc. Act, 1923. This is considered in Chap. XI.

Scotland.—The application of the Acts to Scotland is shown in Chap. XII.

CHAPTER II.—PREPARATION, ADOPTION, AND APPROVAL OF TOWN PLANNING SCHEMES.

Under the Housing, Town Planning, etc. Act, 1909, it was necessary for a local authority to obtain the authority of the Local Government Board to prepare or adopt a town planning scheme (s. 54 (2)); but that provision has been superseded and no such authority is now required.

1. Statutory Provisions respecting Preparation and Adoption of Schemes.

Now by virtue of s. 42 of the Housing, Town Planning, etc. Act, 1919, a local authority (that is a borough council, urban or rural district council, and, in London, the county council) may by resolution decide (*a*) to prepare a town planning scheme with reference to any land within or in the neighbourhood of their area in regard to which a scheme may be made; or (*b*) to adopt, with or without any modifications, any town planning scheme proposed by all or any of the owners of any land with respect to which the local authority are themselves authorised to prepare a scheme.

Land that may be comprised within scheme.—It will be observed that the land to be embraced in a scheme must be "within or in the neighbourhood of the area" of the local authority. As respects any land in the county of London no other local authority than the London County Council may prepare a scheme, except with the consent of the county council (Housing, Town Planning, etc. Act, 1909, s. 55 (3)). As to the sort of land that may be utilised for the purposes of a scheme, see p. 3.

If the resolution extends to land not within the area of the local authority, such resolution will not have effect until it is approved by the Minister of Health. The Minister, in giving his approval, may vary the extent of the land to be included within the area of the proposed scheme (Housing, Town Planning, etc. Act, 1919, s. 42).

If it is proposed that the scheme shall embrace land forming part of a common, open space, or allotment, regard should be had to the provisions of s. 73 of the Housing, Town Planning, etc. Act, 1909. See Chap. IV. p. 47.

Where any land proposed to be included in any scheme is situate within the prescribed distance from any of the royal palaces or parks, the local authority, before preparing the scheme, must communicate with the Commissioners of Works, and the Minister of Health, before confirming the scheme, is to take into consideration any recommendations he may receive from the Commissioners of Works with reference to the proposal (Housing, Town Planning, etc. Act, 1909, s. 74 (1)).

The distance was to be prescribed by regulations made by the Local Government Board after consultation with the Commissioners of Works (Housing, Town Planning, etc. Act, 1909, s. 74 (2)). By regulations dated 2nd September, 1910, the prescribed distance for the purposes of Windsor Castle, Windsor Great Park, and Windsor Home Park, is two miles, and in the case of any other royal palace or park, half a mile.

A clear distinction is to be drawn between land which may form the area of a scheme and land in that area which the responsible authority may purchase by agreement or be authorised to purchase compulsorily. The only limitations with respect to the former are indicated in the statutory provisions above stated. The land which the responsible authority may acquire is not, however, to include the site of an ancient monument or other object of archæological interest; and certain other classes of land may not be acquired compulsorily by the responsible authority for the purposes of a town planning scheme (Housing, Town Planning, etc. Act, 1909, ss. 45 and 60; and see Chap. VII. p. 66).

Joint committee of local authorities.—Where any local authorities are desirous of acting jointly in the preparation or adoption of a town planning scheme, they may concur in appointing out of their respective bodies a joint committee for the purpose, and in conferring with or without restrictions on any such committee any powers which the local authorities themselves might exercise for the purpose. The provisions of ss. 57 and 58 of the Local Government Act, 1894, in regard to joint committees, are, with the necessary modifications, to apply to any joint committee so appointed (Housing, Town Planning, etc. Act, 1919, s. 42).

The function of the joint committee under the above enactment does not extend beyond the preparation or adoption of a scheme. When a scheme has been approved in respect of land, which is in the area of more than one local authority or in the area of a local authority by whom the scheme was not prepared, the responsible authority for enforcing the observance of the scheme and for the execution of any works thereunder may be for certain purposes of the scheme one local authority and for certain purposes another local authority or a joint body constituted specially for the purpose by the scheme (see p. 155).

By reason of the application of ss. 57 and 58 of the Local Government Act, 1894, to the joint committee the power to borrow money or make any rate may not be delegated by an appointing council to such committee (Local Government Act, 1894, s. 57 (2)); the committee may not hold office beyond the expiration of fourteen days after the next annual meeting of any of the appointing councils (*ibid.* s. 57 (3)); and the costs of the committee are to be defrayed by the appointing councils in such proportions as they may agree upon or as may be determined in case of difference by the county council (*ibid.* s. 57 (4)). The accounts of the receipts and payments of the joint committee are to be made up yearly to the thirty-first day of March, or, in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year; and in such form as the Minister of Health may prescribe (*ibid.* s. 58 (1)). See also s. 1 (2) of the Audit (Local Authorities,

etc.) Act, 1922, respecting the date to which the accounts are to be made up. Such accounts are, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), to be audited by a district auditor (*ibid.* s. 58 (2)). The enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, are to apply accordingly (*ibid.* as amended by the Audit (Local Authorities, etc.) Act, 1922, s. 1 (1)). The Minister of Health may, with respect to any audit to which the above provisions apply, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor (Local Government Act, 1894, s. 58 (3)).

The above provisions respecting the appointment of joint committees appear to apply to the case where a county borough desires to act jointly with another local authority in the preparation or adoption of a town planning scheme. (See s. 42 of the Housing, Town Planning, etc. Act, 1919, *supra*, and the case of *Kirkdale Burial Board* v. *Liverpool Corporation*, [1904] 1 Ch. 829.)

It may be remarked that under s. 38 of the Housing, Town Planning, etc. Act, 1909, "where, upon an application made by one of the local authorities concerned, the [Minister of Health] is satisfied that it is expedient that any local authorities should act jointly for any purposes of the Housing Acts, either generally or in any special case, the [Minister] may by order make provision for the purpose, and any provisions so made shall have the same effect as if they were contained in a provisional order made under s. 279 of the Public Health Act, 1875, for the formation of a united district." This provision does not, however, apply to town planning schemes for the reason that the expression "the Housing Acts" does not include the Town Planning Acts, 1909 and 1919 (see pp. 84 to 86).

In a memorandum dated the 30th March, 1921, the Minister of Health observed: "It is desirable that there should be

one town planning scheme for the whole of an area forming one economic unit. If, therefore, there is more than one local authority in that unit, it is necessary that these local authorities should co-operate closely, to the extent, where advantageous, of forming a joint committee for preparing a scheme. The Minister will be prepared to help in any cases of this kind by calling conferences of the local authorities concerned."

Development of estates pending preparation or adoption and approval of schemes.—A town planning scheme has no effect unless it has been approved by order of the Minister of Health (see p. 37). A person is, however, not entitled to obtain compensation under s. 58 of the Housing, Town Planning, etc. Act, 1909, on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme, after the date of the resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect as the case may be, or after such other time as the Minister of Health may fix for the purpose ; subject to the proviso that compensation may nevertheless be obtained as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before the application was made (Housing, Town Planning, etc. Act, 1909, s. 58 (2) ; and Housing, Town Planning, etc. Act, 1919, s. 48 and Sched. III.).

The practical effect of this would be that much of the area of a scheme during the period of its preparation would be " sterilised " in point of building development. To meet this difficulty the Minister of Health is empowered by special or general order to provide that, where a resolution to prepare or adopt a town planning scheme has been passed, the development of estates and building operations may be permitted to proceed pending the preparation or adoption and approval of the scheme, subject to such conditions as may be prescribed by the order ; and, where any building is erected, contract made or other thing done in accordance with a permission granted in pursuance of such an order, a claim to compensation is not to

be prejudiced (Housing, Town Planning, etc. Act, 1919, s. 45; and see p. 114).

For the purpose of this section, a local authority is now empowered to permit the development of estates and building operations subject to compliance with all such requirements as the local authority may reasonably impose (Town Planning (General Interim Development) Order, 1922, articles 3 and 5). For the text of this order, see p. 186.

Application for permission is to be made in the manner prescribed, and the local authority is not to permit any inconsistency with the provisions of any local Acts, regulations, or building bye-laws in force in the area. An appeal from the local authority's decision lies to the Minister of Health. The order remains in force in an area until the approval of a preliminary statement for that area or of the scheme, where a preliminary statement is not required (*ibid.* articles 4, 8, and 9; and see p. 27).

It is the practice of the Minister of Health to provide in a preliminary statement when approved by him for a continuance of the power of the local authority to permit interim development subject to conditions as set out in the preliminary statement (see p. 191).

Forms of permission for use under the Town Planning (General Interim Development) Order, 1922, will be found in Appendix B, at pp. 188 to 190.

A number of special orders under s. 45 of the Housing, Town Planning, etc. Act, 1919, have been made by the Minister of Health.

Observations of Minister of Health as to town planning schemes.—In a memorandum dated the 30th March, 1921, the Minister of Health made the following observations: "The importance of providing for the systematic development of areas cannot be too highly estimated. Now less than ever can we afford the waste which has been the result of the haphazard growth of towns in the past; and therefore, in conformity with the measures which are now being taken for economy, wise action is necessary as regards town planning. For industry, even more than for housing, the gains of proper

town planning are great, by locating factories, workshops, and businesses in the places best adapted for them and by providing betimes for proper roads and other communications, and thus avoiding the later necessity of costly street improvements. The works or measures for which provision is made in town planning schemes will need to be carried out, of course, only as and when development makes them necessary."

The Minister further observed: "Local authorities should, at the outset at least, make their town planning schemes as simple as possible, concentrating on the two essentials—settling the principal lines of communication, and allocating areas for the purposes for which they are best suited (zoning), whether industrial, business, residential, or as open spaces; this procedure will make for economy and for efficiency."

The Minister added that he will be glad at all times to place the assistance of his officers at the disposal of local authorities in the preparation of their schemes.

In a further memorandum dated August, 1922, and issued at the same time as the Town Planning (General Interim Development) Order, 1922, it is observed: "The Minister considers it of the greatest importance that private development should not be arrested while a town planning scheme is in course of preparation and that owners should be able to proceed with genuine building plans without fear of the subsequent effects of a scheme."

The need for the consultation of local interests is emphasised in a memorandum issued by the Minister of Health in August, 1921. It is there observed that "the Minister considers it of the highest importance that both the local authorities and his department should have the full advantage of the consideration of town planning schemes by all parties specially interested, *e.g.* business men, landowners, persons concerned with transport or housing (including the private builder) and social agencies. However perfect a plan may be on paper, it will have little chance of being successfully carried out unless it commands general public support. Town planning is preeminently a matter which concerns the people themselves."

It is further pointed out in the same memorandum that

" the town planning regulations impose on local authorities the duty of advertising their proposals, of issuing notices to individual owners, of giving a hearing to interested parties, and of taking steps by conference or otherwise to secure their agreement and co-operation. Apart from any proceedings enjoined by the regulations, however, local authorities should themselves arrange local conferences with recognised representatives of any particular interests affected; they should take the initiative and not wait for others to take the first steps."

2. Regulations respecting the Preparation and Adoption of Schemes.

The Local Government Board were empowered under s. 56 of the Housing, Town Planning, etc. Act, 1909, to make regulations for regulating generally the procedure to be followed with respect to the preparation or adoption of a town planning scheme; and their successor, the Minister of Health, has a like power under the provisions of that section as amended by the Housing, Town Planning, etc. Act, 1919. With respect to such provisions, see pp. 129 to 131.

The original regulations respecting the preparation and adoption of town planning schemes were made by the Local Government Board on the 3rd May, 1910, and were known as the Town Planning Procedure Regulations (England and Wales), 1910. These regulations related to the " procedure anterior to and for the purpose of an application for authority to prepare or adopt a scheme " (articles 1–11)—an application for such authority having been necessary before the passing of the Housing, Town Planning, etc. Act, 1919—see p. 152; to the " procedure during, in, and after the preparation or adoption and before the approval of the scheme " (articles 12–26); to the " procedure after the approval of the scheme " (article 27); and to general matters (articles 28–36).

On the 11th February, 1914, the Local Government Board made fresh regulations, known as the Town Planning Procedure

Regulations (Preparation of Schemes by Local Authorities), 1914; and thereby (article 38 (1)) the Town Planning Procedure Regulations (England and Wales), 1910, were revoked "except so far as they applied to the adoption by a local authority of any scheme proposed by any owner or owners of land."

Further regulations known as the Ministry of Health (Town Planning) Regulations came into force on the 2nd May, 1921 (article 1 (1)).

Regulations respecting preparation of schemes authorised before the 31st July, 1919.—The Town Planning Procedure Regulations (Preparation of Schemes by Local Authorities), 1914, were revoked by the regulations of 1921 subject to the proviso that the regulations of 1914 should, save in so far as they were inconsistent with any of the provisions of the Housing, Town Planning, etc. Act, 1919, continue to apply in all cases where before the 31st July, 1919, a local authority had been authorised to prepare a town planning scheme (article 1 (2)). But by article 17 (1) of the regulations of 1921 the Minister of Health was empowered, as respects any of the schemes last mentioned, by order to direct that the regulations of 1921 should apply thereto with such modifications as in the opinion of the Minister the circumstances of the case might require. The date, 31st July, 1919, was specified as being the date of the passing of the Housing, Town Planning, etc. Act, 1919.

Regulations respecting preparation of schemes, where resolution passed after 31st July, 1919, *and before the 2nd May*, 1921.—It was provided by article 17 (2) of the regulations of 1921 that, where after the 31st July, 1919, and before the 2nd May, 1921 (the date on which the regulations of 1921 came into force), a local authority should have passed a resolution deciding to prepare a town planning scheme, the regulations of 1921 were to apply as though the resolution had been passed on the day on which those regulations came into force, or, where the resolution extended to land not within the area of the local authority, on the day on which the regulations came into force, or on which the approval of the Minister of Health should be given, whichever was the later.

The details of the Ministry of Health (Town Planning) Regulations will be found at pp. 17 to 38 and their text at pp. 176 to 186.

Regulations respecting preparation of schemes where resolution passed after the 1st May, 1921.—As regards such schemes the provisions of the Ministry of Health (Town Planning) Regulations, 1921, will, of course, be directly applicable.

The details of the regulations will be found at pp. 17 to 38 and their text at pp. 176 to 186.

Regulations respecting the adoption of schemes.—It will be observed that, so far as the adoption of schemes proposed by the owners of land is concerned, the regulations contained in the Town Planning Procedure Regulations (England and Wales), 1910, stand unrepealed. These regulations are framed with reference to the adoption of schemes under the Housing, Town Planning, etc. Act, 1909, which required the authority of the Local Government Board (afterwards the Minister of Health) to be obtained before the local authority might adopt the scheme. The regulations are hardly suitable to the adoption of schemes since the passing of the Housing, Town Planning, etc. Act, 1919, which enabled a local authority to pass a resolution adopting a scheme proposed by owners in the first instance, and without any prior authority from the Minister of Health.

3. Detailed Procedure respecting the Preparation of Schemes.

The detailed procedure respecting the preparation of town planning schemes initiated since the 31st July, 1919, is now to be found in the Ministry of Health (Town Planning) Regulations, 1921. All the provisions of these regulations will be found in the following pages.

The Minister of Health may, if he thinks fit in any particular case, and subject to such conditions as he may impose, extend the period during which anything is required to be done under the period during which anything is required to be done under the regulations, or dispense with any of the requirements of the regulations, other than requirements made obligatory by statute, provided that he is satisfied that there is reasonable

cause for such extension or dispensation and that the interests of any person will not be prejudiced thereby (article 19 (1)).

A local authority shall furnish the Minister of Health, in addition to the information and particulars specified by the regulations, with all such further information or particulars as the Minister may from time to time require (article 20).

All maps, documents, and notices deposited for inspection under the regulations shall be available for inspection at all reasonable hours and without payment of any fee (article 21).

The Interpretation Act, 1889, applies to the interpretation of the regulations as it applies to the interpretation of any Act of Parliament (article 2 (2)).

Table summarising procedure.—Attention is here drawn to a table summarising the procedure under the Ministry of Health (Town Planning) Regulations, 1921, to be found in Appendix D. This table, it is hoped, will prove of practical value.

(*a*) *Resolution to prepare Scheme.*

Form of resolution to prepare scheme.—The resolution of a local authority deciding to prepare a town planning scheme shall define the area of the proposed scheme by reference to a map (called "Map No. 1") showing by means of boundary lines defined in colour or otherwise the area of the land to which the resolution applies (Ministry of Health (Town Planning) Regulations, 1921, article 3 (1)).

"Map" means a map on a scale of not less than 25 inches to the mile or such smaller scale as the Minister of Health may in any particular case approve, and includes a plan or a series of maps or plans (article 2 (1)).

The map should be an ordnance map (Memorandum of Minister of Health, dated the 30th March, 1921).

As respects Map No. 1, a map on a scale of 6 inches to the mile will be accepted by the Minister of Health, where the prescribed particulars can be shown with sufficient accuracy on this scale (*ibid.*).

A form of resolution (Form 1A in Appendix C (II), see p. 194) was suggested by the Minister of Health in July, 1921, as

suitable under article 3 (1) in cases where the area of the scheme is wholly within the district of the local authority preparing the scheme. A further form (Form 1B on p. 195) was also suggested for use where the area extends outside the district of the local authority.

Advertisement of resolution.—The local authority shall as soon as may be after passing the resolution give notice thereof by advertisement, and shall include in the notice a statement that Map No. 1 or a copy thereof will be open for inspection at a specified place or places, and that any suggestions for the inclusion or exclusion of any lands in or from the area of the proposed scheme may be sent in writing to the local authority within a specified period not being less than twenty-one days from the date of the first advertisement (Regulations, 1921, article 3 (2).

"Advertisement" means an advertisement published at least once during each of two successive weeks in a newspaper or newspapers circulating in the area of the local authority (article 2 (1)).

The local authority may, if they think fit and subject to such conditions as they may impose, extend the time during which the suggestions may be sent to them (article 19 (2)).

Form 2A in Appendix C (II) (see p. 195) is a form of advertisement suggested by the Minister of Health as suitable under article 3 (2) for use where the area is wholly within the district of the local authority. Form 2B (see p. 195) is suggested for use where the area extends outside the district.

Documents, etc., to be sent to the Minister of Health.—Under Article 3 (3) of the Ministry of Health (Town Planning) Regulations, 1921, certified copies of the resolution and of Map No. 1, and of each advertisement, and copies of all suggestions received by the local authority under article 3, are to be sent as soon as may be by the local authority to the Minister of Health, together with full particulars of the following matters: (*a*) where the resolution extends to land not within the area of the local authority passing the resolution, the reasons for the inclusion of land outside the area of the local authority; (*b*) information, in the form required by the Minister of Health, as to the re-

sponsible authority under the scheme ; the acreage and general character and development of the area ; and the inclusion of any land already built upon or not likely to be used for building purposes, or of any Crown land.

As to Map No. 1, see *supra*. The copy sent to the Ministry of Health should be folded in book form (Memorandum of Minister of Health, dated the 30th March, 1921).

Where the resolution extends to land not within the area of the local authority passing the resolution, the same will not have effect until approved by the Minister of Health (see p. 9).

With respect to the responsible authority, see p. 6.

As to the inclusion of land already built upon, or not likely to be used for building purposes, see p. 4.

The Minister of Health requires the particulars of the matters specified in (*a*) and (*b*) above to be furnished in the form appearing in Appendix C (III), at p. 200.

Documents to be sent to interested local authorities.—A certified copy of the resolution is to be sent to any interested local authority, and, if they so require, of Map No. 1, or a map on a scale of six inches to the mile certified to show accurately the area of the land to which the resolution applies (article 3 (4)).

The expression "interested local authority" means the council of the county in which, or any local authority in whose area, land proposed to be included in a town planning scheme is situate (article 2 (1)).

Advertisement of approval of resolution.—Where the approval of the Minister of Health is required to the resolution of a local authority deciding to prepare a town planning scheme, the local authority shall give notice by advertisement that the Minister has approved the resolution as soon as may be after the date of such approval (article 3 (5)).

A resolution extending to land not within the area of the local authority must be approved by the Minister of Health (see p. 9).

As to the meaning of "advertisement," see p. 19.

The Minister of Health has suggested a form of advertisement under article 3 (5) giving notice of approval, and this form appears as Form No. 3 in Appendix C (II), at p. 196.

(*b*) *Preliminary Statement of Proposals for Development.*

The regulations provide for the preparation of a preliminary statement of the proposals of the local authority for the development of the land in question. This statement has to be submitted to and approved by the Minister of Health. The local authority may then proceed with the preparation of the scheme proper. This begins with the adoption by the local authority of a draft scheme (which is not, where a preliminary statement has been approved, submitted to the Minister of Health), and is followed in due course by the adoption by the local authority of the scheme proper which is sent to the Minister for his approval. It is, however, provided by article 18 of the regulations that a local authority may, if they think fit, adopt by resolution a draft scheme within the period prescribed by the regulations for the adoption by resolution of a preliminary statement, and in that case the draft scheme shall, if the Minister of Health so directs, be substituted for the preliminary statement, and the regulations shall apply accordingly with such modifications as, in the circumstances of the case, the Minister may direct. Six months from the date of the resolution of the local authority deciding to propose a town planning scheme is the prescribed time for the adoption by the local authority of the preliminary statement (see article 4 (1), p. 178).

For a model form of preliminary statement issued by the Minister of Health, see Appendix C (I), pp. 191 to 194.

The provisions of the regulations which apply, when a preliminary statement is prepared and adopted, are now considered in detail.

Preparation and adoption of preliminary statement:—Within a period of six months from the date of a resolution deciding to prepare a town planning scheme, or, where the resolution extends to land not within the area of the local authority, within a period of six months from the date of the approval of the resolution by the Minister of Health, the local authority shall prepare and adopt by resolution a preliminary statement

of proposals for development (called " the preliminary statement "), and shall for that purpose take into consideration any representations in writing made by persons interested or by any interested local authority with respect to the area of the proposed scheme or otherwise with respect to the development of the area (Ministry of Health (Town Planning) Regulations, 1921, article 4 (1)).

As to the meaning of the expression " interested local authority," see p. 20.

The use of the expression " adopted " with reference to the preliminary statement is to be distinguished from its use in the Town Planning Procedure Regulations (England and Wales), 1910, with respect to the adoption of a town planning scheme prepared by the owners of the land to which the scheme relates. There is no provision in the Regulations of 1921 for the adoption of a preliminary statement prepared by owners.

Contents of preliminary statement.—By article 4 (2) of the regulations the preliminary statement shall contain particulars of the matters specified in the second schedule to the regulations and shall refer to a map (called " Map No. 2 ") showing by means of boundary lines defined in colour or otherwise the area to be included and illustrating, so far as possible, the said particulars.

The matters specified in the second schedule are as follows :—

(1) area to be included in the town planning scheme (to be defined by the inner edge of a boundary line shown on Map No. 2) ;

(2) (*a*) the principal new streets or roads which it is proposed shall be made as part of the scheme, with their position, and any proposed widenings of any existing streets or roads ;

(*b*) building lines or spaces about buildings proposed to be prescribed in relation to the principal new streets or widenings ;

(3) roads, streets, or ways which it is proposed to stop up or divert ;

(4) restrictions proposed, and the areas to which the several restrictions are to apply, as regards—

(*a*) character of buildings to be erected (*e.g.* whether dwelling-houses, public buildings, business premises, factories or workshops for light industries, or factories

or workshops for heavy industries, or partly one class of building and partly another) ;

(*b*) density of buildings (that is, number of dwelling-houses to the acre, and proportion of site to be covered by buildings) ;

(*c*) height of buildings ;

The proposed restrictions and the areas to which they are to apply (as well as open spaces or other areas not to be built upon which are mentioned below) should be shown by distinctive colours or hatchings on Map No. 2.

(5) areas proposed to be reserved for open spaces or other areas not to be built upon.

The following particulars are also to be shown on Map No. 2 :—

(*a*) existing main roads ;

(*b*) roads repairable by the inhabitants at large ;

(*c*) roads or footways over which the public have a right of way ;

(*d*) land already built upon within the area of the scheme or in the immediate neighbourhood thereof, distinguishing factories ;

(*e*) railways, tramways or light railways constructed or authorised to be constructed within the area of the scheme or in the immediate neighbourhood thereof ;

(*f*) land forming part of any common, open space or allotment within the meaning of s. 73 of the Housing, Town Planning, etc. Act, 1909, within the area of the scheme or in the immediate neighbourhood thereof.

Form of preliminary statement.—A model form of preliminary statement issued by the Minister of Health in April, 1921, appears in Appendix C (I), at p. 191. In the memorandum accompanying the form it is observed that it will be convenient if the local authority will follow the form as far as possible, although it is intended only as a model and not for actual use in the preparation of the statement. There is an important indication of the function of the preliminary statement in the further observation that " the statement is not intended to do more than show in outline the main proposals and to explain

the map accompanying it." The memorandum also emphasises a rule of prime importance in successful town planning, namely that, to avoid delay, the preliminary statement should be kept as simple as possible and should not attempt to include all the details to be covered by the completed scheme.

Map No. 2.—The general notes on article 3 (1) with respect to maps (see p. 18) will apply to Map No. 2. This map should be prepared in accordance with the system of notation issued by the Minister of Health in April, 1921, which appears at pp. 203 and 204, in Appendix C (IV).

Commons, open spaces, and allotments.—With respect to commons, open spaces, and allotments proposed to be utilised for town planning schemes, see pp. 9, 38, and 47. In a memorandum issued by the Minister of Health in August, 1921, it is observed that " where the proposals for development in connection with a town planning scheme involve the acquisition or appropriation of any common, open space, or allotment within the meaning of s. 73 of the Housing, Town Planning, etc. Act, 1909, the Minister considers it desirable that opportunity should be given to interested persons to make representations and objections thereto at the preliminary statement stage, and that particulars of the lands to be acquired or appropriated should be included in the deposited statement with this object, as well as being shown clearly on the Map No. 2." The particulars may be given in the form which appears in Appendix C (I), at p. 194, appearing as item (6) of the model form of preliminary statement.

The memorandum proceeds to observe: " If the proposed appropriations cannot be shown with clearness on the map itself without confusing other notation, they should be shown on tracings from the map and attached thereto, or in other sufficient manner. It would facilitate consideration of the preliminary statement if other proposed appropriations of lands were also shown on Map No. 2, or tracings therefrom, and if the particulars as to appropriations supplied in form T.P.4." (see p. 201) " showed whether the lands were subject to any trusts or covenants conflicting with the proposed user of the lands under the scheme."

Advertisement of draft preliminary statement.—The local authority shall, before adopting a preliminary statement by resolution, give notice of their intention so to do by advertisement and shall take such other steps as they may think fit by means of public posters or otherwise to bring their intention to the notice of persons interested (article 5 (1)).

As to the meaning of "advertisement," see p. 19.

The notice or other public announcement shall include a statement that a draft of the preliminary statement proposed to be adopted and a map illustrating the particulars in the draft preliminary statement will be open for inspection at a specified place or places, and that any objections or representations with regard to the draft statement may be sent in writing to the local authority within a specified period not being less than twenty-one days from the date of the first advertisement (article 5 (2)).

The local authority may, if they think fit and subject to such conditions as they may impose, extend the time during which any objections or representations may be sent to them (article 19 (2)).

A form of advertisement (Form No. 4) under article 5 (1), sanctioned by the Minister of Health, to give notice of intention to adopt a preliminary statement appears at p. 196, in Appendix C (II).

The local authority shall take into consideration any objections and representations in writing which they may receive within such period, and shall take such steps as they may think necessary by means of conferences or otherwise to secure so far as may be possible the agreement and co-operation of persons interested (article 5 (4)).

Draft statement to be sent to interested local authorities.—The local authority shall send to any interested local authority the draft of the preliminary statement, and, if so required by them, a map of so much of the land as is situate in the area of that authority, illustrating the particulars in the draft statement so far as it relates to that land (article 5 (3)).

As to the meaning of the expression "interested local authority," see p. 20.

It may especially be noted that no notice to individual owners is necessary, either as to the original resolution to prepare the scheme or as to the preliminary statement. This marks an important difference from the requirements of the earlier regulations.

Resolution adopting preliminary statement.—Form No. 5 at p. 196, in Appendix C (II), is a form of resolution under article 4 (1) (see p. 178), adopting the preliminary statement and Map No. 2 which has been sanctioned by the Minister of Health.

Documents, etc., to be sent after passing of resolution.—As soon as may be after the passing of a resolution adopting a preliminary statement the local authority shall send to the Minister of Health a certified copy of—

(*a*) the resolution, the preliminary statement, and Map No. 2;

(*b*) each advertisement or other public announcement;

(*c*) any objections or representations in writing received by the local authority which have not been removed or met in the preliminary statement adopted;

(*d*) particulars, in the form required by the Minister, respecting lands in the possession of local authorities, housing schemes and ancient monuments in the area (article 6 (1)).

As to Map No. 2, see *supra*. The copy sent to the Ministry of Health should be folded in book form (Memorandum of Minister of Health, dated the 30th March, 1921).

With respect to ancient monuments, see p. 66.

The Minister of Health requires a certain form to be used in furnishing particulars under article 6 (1), and this form appears in Appendix C (III), at pp. 200 and 201.

Where the preliminary statement relates to land not within the area of the local authority, the local authority shall send to the local authority of the district in which such land is situate a certified copy of the resolution, of the preliminary statement, and of Map No. 2 so far as it relates to such land (article 6 (2)).

Where any land to which the resolution deciding to prepare a town planning scheme applied is not included in the land

to which the preliminary statement relates, the local authority shall notify the fact thereof to the owner of such land (article 6 (3)).

Proceedings upon approval by Minister of Health of preliminary statement.—The Minister of Health shall take the preliminary statement into consideration and shall notify the local authority that he approves or disapproves it, as the case may be, or that he approves it with modifications, provided that any such approval shall be without prejudice to any provisions of the town planning scheme to be subsequently submitted by the local authority to the Minister or to the approval or disapproval by the Minister of that scheme (article 7 (1)).

The provision that the preliminary statement is not to " prejudice " the subsequent scheme is of essential importance : it again shows that the preliminary statement is purely a record of a stage in the development of the town planning scheme, without necessarily committing those who prepare the statement as to the actual contents of the scheme to be submitted to the Minister. It must nevertheless be borne in mind that the preliminary statement, when made, takes the place of the Town Planning (General Interim Development) Order, 1922, in controlling " interim development " in the area to which the scheme is intended to apply (see p. 188).

The local authority shall as soon as may be after the receipt of a notification from the Minister of Health approving the preliminary statement with or without modifications give notice thereof by advertisement, and shall include in the notice a statement that a print of the preliminary statement and Map No. 2, as approved by the Minister, will be open for inspection at a specified place or places, and that the local authority propose to proceed forthwith with the preparation of the town planning scheme for submission in due course to the Minister (article 8).

As to the meaning of " advertisement," see p. 19.

A model form of advertisement (Form No. 6) has been issued by the Minister for the purposes of article 8 of the regulations and appears in Appendix C (II), at p. 197.

List of preliminary statements already submitted and approved.—Preliminary statements which have received the approval of the Minister of Health up to the present date have been submitted by the following local authorities: Bradford Corporation (Schemes 1 and 2); Margate Corporation (Schemes 1 and 2); Linthwaite Urban District Council; Woodford Urban District Council; Altrincham Urban District Council; and Great Crosby Urban District Council.

Of these perhaps the Margate and Woodford are the most useful examples of preliminary statements.

Procedure if Minister of Health disapproves preliminary statement.—Where the Minister of Health notifies the local authority that he disapproves the preliminary statement, the local authority shall, within three months from the date of such notification, prepare and adopt by resolution another preliminary statement, and the provisions of articles 6 to 8 shall, with the necessary modifications, apply to such further statement (article 8 (2)).

As to the provisions of articles 6 to 8, see *supra*.

(*c*) *The Town Planning Scheme.*

The draft scheme.—A draft of the town planning scheme shall be adopted by resolution of the local authority not later than twelve months after the date of the approval by the Minister of Health of the preliminary statement (article 9 (1)).

A model resolution (Form No. 7) has been approved by the Minister of Health and appears in Appendix C (II), at p. 197.

Contents of draft scheme.—The draft scheme shall refer to a map (called "Map No. 3") showing by means of boundary lines defined in colour or otherwise the area included in the scheme, and illustrating such particulars and details in relation thereto as can conveniently be indicated by reference letters, numbers, distinguishing colours or otherwise, and more particularly the following matters:—

(1) the area included in the draft scheme (to be defined by the inner edge of a boundary line shown on the map);

(2) (*a*) new streets, and widenings of any existing streets or roads, proposed to be made as part of the scheme ;

(*b*) building lines or spaces about buildings proposed to be prescribed ;

(3) particulars required under paragraphs (3), (4), and (5) of the second schedule to the regulations. As regards areas not to be built upon, the purposes for which they are to be reserved should be indicated (article 9 (2)).

As to paragraphs (3), (4), and (5) of the second schedule, see pp. 184 and 185.

Map No. 3.—As to the meaning of "map," see p. 18. As to the system of notation which should be used, see Appendix C (IV), pp. 203, 204. As to the relation between the map and the scheme, see p. 38.

Advertisement of draft scheme.—The local authority by whom a resolution has been passed adopting a draft scheme shall forthwith give notice thereof by advertisement and shall include in the notice a statement that a print of the draft scheme and Map No. 3, or a certified copy thereof, will be open for inspection at a specified place or places, and that any interested local authority or other person desiring to object or make representations with respect to the draft scheme or any part thereof may send the representations or objections in writing to the local authority within a specified period not being less than four weeks from the date of the first advertisement (article 10 (1)).

As to the meaning of "advertisement," see p. 19.

As to the meaning of the expression "interested local authority," see p. 20.

The local authority may, if they think fit and subject to such conditions as they may impose, extend the time during which any representations or objections may be sent to them (article 19 (2)).

A model form (Form No. 8) of advertisement under article 10 (1) of the regulations has been sanctioned by the Minister of Health and appears in Appendix C (II), at pp. 197 and 198.

Service of notice of draft scheme on certain persons and

authorities.—The local authority shall, as soon as may be after the passing of the resolution adopting the draft scheme, in addition to the publication of the advertisement as above, serve a notice in the same terms on the following persons: (*a*) any owner of land included or proposed to be included in the scheme; (*b*) any interested local authority (see p. 20); (*c*) the Minister of Agriculture and Fisheries, where the scheme provides for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment; (*d*) the Commissioners of Works, where the scheme includes any land situate within the prescribed distance from any of the royal palaces or parks; (*e*) the Minister of Transport, where the scheme provides for the inclusion of any land on which any railways, tramways, or light railways are constructed or are authorised to be constructed (article 10 (4)).

As to the meaning of the term "owners," see p. 33.

With respect to commons, open spaces, and allotments, see p. 38.

With respect to land situate within the prescribed distances from the royal palaces and parks, see p. 9.

The notice shall be served—(*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent; or (*b*) by leaving the same at the usual or last known place of abode of such person; or (*c*) by post addressed to the usual or last known place of abode of such person; or (*d*), in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to the clerk or secretary or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office.

If the owner of any land is not known to and after reasonable inquiry cannot be found by the local authority, the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some part of the land or in some conspicuous place in the immediate neighbourhood thereof (article 22).

An accidental omission to serve a notice required under the regulations shall not render any proceedings thereunder invalid (*ibid.*).

It should especially be noted that (as distinguished from the requirements of the earlier regulations) this is the first stage at which any separate notice (that is, one other than by advertisement) is to be sent to owners.

Documents to be sent to Minister of Health.—A certified copy of the resolution adopting the draft scheme and of each advertisement, together with a certified copy of the draft scheme and of Map No. 3, shall be sent forthwith by the local authority to the Minister of Health (article 10 (3)).

Consideration of objections and representations.—The local authority shall take into consideration all objections and representations in writing received by them within the period specified under article 10 (1) (see p. 180), and shall give full opportunity to any interested local authority and to persons making such objections or representations, including persons representing architectural or archæological societies or otherwise interested in the amenities of the scheme, to be heard in such manner as the circumstances and the justice of the case may require (article 11).

Final approval of scheme by local authority (within six months after adoption of draft scheme).—The local authority shall, within six months from the date of the resolution adopting the draft scheme, pass a resolution finally approving the scheme with or without modifications and directing that the scheme as approved by them and the map to which the scheme refers (called "Map No. 4") shall be sealed with the seal of the authority and submitted to the Minister of Health for his approval. If the map to be sealed is identical in all respects with the Map No. 3 prepared in accordance with article 10 (see p. 180), the last-mentioned map, if the local authority think fit, may with the consent of the Minister of Health be used for the purposes above, but if so used it shall be marked as Map No. 4 in addition to being marked as Map No. 3 (article 12 (1)).

See the notes on "Map No. 3" at p. 29.

A print of the scheme is to be sent by the local authority to every interested local authority, see p. 181 (article 12 (3)).

A model resolution for use under article 12 (1) appears as Form No. 10 in Appendix C (II), at p. 198.

Submission of scheme to Minister of Health.—The local authority shall, as soon as may be after passing the resolution adopting the draft scheme, submit a sealed duplicate of the scheme and of Map No. 4 to the Minister of Health for his approval, together with the documents and information specified in the fifth schedule to the regulations, and shall send to the Minister copies of all objections and representations in writing received by them which have not been removed or met in the scheme (article 12 (2)).

The fifth schedule to the regulations comprises the following :—

(1) The documents required under article 12 (2) above specified.

(2) Six prints of the scheme and a certified copy of the resolution directing that the scheme be submitted to the Minister of Health for approval.

(3) A map on a scale of not less than 25 inches to the mile (to be marked and known as " Map No. 5 ") showing the area of the land included in the scheme so divided as to indicate as nearly as may be the portions of the land belonging to different owners, and showing as regards each parcel of land by reference to a list of owners the name of the owner thereof.

(4) A list of all local Acts, provisional orders, bye-laws, or regulations in force in the area of any local authority any part of whose district is included in the scheme, and copies of those which contain any provisions affecting the scheme, with references thereto.

(5) Particulars, in the form required by the Minister of Health, of proposed acquisition of land by local authorities under the scheme ; of works to be executed ; of proposed appropriations of commons, open spaces, or allotments ; of any enactments or other provisions which it is proposed to suspend, with the reasons for the proposal ; of the estimated

cost of carrying out the scheme ; and of the acreage, population, rateable value, etc., of the districts concerned.

As to the meaning of " map," see p. 18.

" Owners " has for the purpose of the regulations the same meaning as in the Lands Clauses Acts, but does not include persons holding or entitled to the rents and profits of land or premises under any lease or agreement the unexpired portion whereof is less than three years (article 2 (1)). In the Lands Clauses Acts (see Lands Clauses Consolidation Act, 1845, ss. 3 and 7) owners means " all parties seised, possessed of or entitled to " lands and particularly " corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest."

" The Minister of Health has arranged that, if application is made to him by the local authority, the Commissioners of Inland Revenue will authorise the district valuers to supply the authority with such information as they possess as to the names and addresses of the owners of land included in the authority's scheme. In many cases this procedure will save time and expenditure in obtaining the necessary particulars " (Memorandum of Minister of Health, dated the 30th March, 1921).

As regards commons, open spaces, and allotments, see p. 38.

With respect to the suspension of Acts, bye-laws, regulations, etc., by the provisions of a scheme, see pp. 45 and 256.

Particulars under paragraph (5) of the fifth schedule to the regulations are required by the Minister of Health to be furnished in the form appearing in Appendix C (III), at pp. 201 and 202.

Advertisement of scheme submitted to Minister of Health.— A local authority who have submitted a scheme to the Minister of Health for his approval shall forthwith give notice thereof by advertisement, and shall include in the notice a statement that a print of the scheme submitted and Map No. 4, or a

certified copy thereof, will be open for inspection at a specified place or places, and that any objections or representations relating thereto shall be sent in writing to the Minister within a period of not less than twenty-one days from the date of the first advertisement (article 13 (1)).

As to the meaning of "advertisement," see p. 19.

A certified copy of each advertisement is to be sent to the Minister of Health as soon as may be after the publication thereof (article 13 (2)).

A model form of advertisement for use under article 13 (1) of the regulations has been issued by the Minister of Health and appears as Form No. 11 in Appendix C (II), at p. 198.

Public inquiry.—The Minister of Health shall, before taking the scheme into his consideration, cause a public inquiry to be held at which any local authority or persons interested in or affected by the scheme may be heard, and shall cause a report of such inquiry to be made to him (article 14 (1)).

As to inquiries by the Minister of Health, see Chap. IX.

It is to be observed that this is the first and only public inquiry directed to be held under the regulations of 1921. This constitutes an important point of distinction from the earlier regulations, which made no provision for the holding of inquiries. It was nevertheless the practice in carrying out such regulations for two inquiries to be held—the first upon the application for leave to prepare a scheme, and the second after the scheme had been submitted for approval.

Proceedings upon approval of scheme by Minister of Health.—The Minister of Health shall, after duly considering the scheme and the report of the inquiry, notify the local authority of his intention to approve or disapprove the scheme, as the case may be, or to approve it with modifications (article 14 (2)).

The local authority shall, on receipt of a notification from the Minister of Health of his intention to approve a scheme with or without modifications, forthwith give notice thereof by advertisement and shall include in the notice a statement that a print of the scheme in the form in which the Minister has notified his intention to approve it may be inspected at a specified place or places (article 15 (1)).

As to the meaning of " advertisement," see p. 19.

A model form of advertisement under article 15 (1) of the regulations has been approved by the Minister of Health and appears in Appendix C (II), at p. 198, as Form No. 12.

The local authority shall, in addition to the above publication by advertisement, serve a notice upon the owners of the land included in the scheme and upon any interested local authority to the like effect, but including also a statement that any owner or interested local authority desiring to object to the approval of the scheme by the Minister of Health may within twenty-one days from the date of the service of the notice send any objections or representations in writing with the grounds thereof to the Minister (article 15 (2)).

As to the meaning of the term " owners," see p. 33 ; and as to the expression " interested local authority," see p. 20.

As to the manner of serving the notice, see article 22, p. 183.

A model form of notice (Form No. 13) for use under article 15 (2) of the regulations has been issued by the Minister of Health and appears in Appendix C (II), at p. 199.

The local authority shall send to the Minister of Health certified copies of the notice of the Minister's approval of the scheme and of each advertisement (article 15 (3)).

The Minister of Health shall take into consideration any objections or representations received by him and shall thereafter by order finally approve the scheme with or without modifications and shall notify the local authority accordingly (article 16 (1)).

See notes, *post*, pp. 36 to 38, under the heading " Approval of Schemes."

Advertisement and service of order approving scheme.—The local authority shall on receipt of the order of the Minister of Health approving the scheme forthwith serve upon the persons below mentioned a copy of the order approving the scheme and shall also give notice of the order by advertisement and shall include in the notice a statement that a copy of the order of the Minister approving the scheme may be inspected at a specified place or places (article 16 (2)).

Service of the order is to be made upon the following persons: (*a*) any owner of land included in the scheme; (*b*) any interested local authority (see p. 20); (*c*) the Minister of Agriculture and Fisheries, where the scheme provides for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment; (*d*) the Commissioners of Works, where the scheme includes any land situate within the prescribed distance from any of the royal palaces or parks; (*e*) the Minister of Transport, where the scheme provides for the inclusion of any land on which any railways, tramways, or light railways are constructed or are authorised to be constructed.

With respect to commons, open spaces, and allotments, see pp. 9 and 47; and as regards land situate within the prescribed distance from royal palaces and parks, see p. 9.

A model form of advertisement of approval of a town planning scheme issued by the Minister of Health for use under article 16 (2) of the regulations appears as Form No. 14, on p. 199, in Appendix C (II).

Form No. 15 in the same Appendix (p. 199) is a model form of notice similarly issued for use under article 16 (2).

A certified copy of each advertisement is to be sent by the local authority to the Minister (article 16 (3)).

Proceedings upon disapproval of scheme by Minister of Health (within six months of date of notification).—Where the Minister of Health notifies the local authority that he disapproves the scheme, the local authority shall, within six months from the date of such notification, prepare and adopt by resolution another scheme, and the provisions of articles 9 to 14 shall, with the necessary modifications, apply to such further scheme (article 14 (3)).

For the provisions of articles 9 to 14, see *supra*.

4. Approval of Schemes.

A town planning scheme prepared and adopted by a local authority will not have effect unless it is approved by order of the Minister of Health (Housing, Town Planning, etc. Act, 1909, s. 54 (4)).

The Minister may refuse to approve a scheme except with such modifications and subject to such conditions as he thinks fit to impose (*ibid.*).

Under s. 61 of the Act of 1909 (see p. 158) if the Minister is satisfied, after holding a public local inquiry, that a local authority have unreasonably refused to consent to any modifications or conditions imposed by him, he may order the local authority to consent to the modifications or conditions so imposed. It appears from this provision that the Minister of Health cannot merely amend a scheme submitted to him by a local authority and approve the scheme as so amended. The modifications and conditions he proposes must receive the consent, either voluntary or compulsory, of the local authority.

Effect of an approved scheme.—A town planning scheme, when approved by the Minister of Health, is to have effect "as if enacted in the Housing, Town Planning, etc. Act, 1909" (s. 54 (5)). It is apprehended that the statutory status thus given to a town planning scheme does not have the effect of rendering valid provisions in a scheme which are in excess of, or contrary to, the provisions of the Town Planning Acts, 1909 and 1919. Nor does such an effect any the more arise because the town planning scheme has been approved by an "order" of the Minister of Health (see s. 54 (4), *supra*); although such an order is expressed by s. 295 of the Public Health Act, 1875 (applied to the Housing, Town Planning, etc. Act, 1909, by s. 63 thereof; see Chap. IX. pp. 137 and 138), to be "binding and conclusive in respect of the matters to which it refers" (*cf. Attorney-General* v. *Hanwell Urban District Council*, [1900] 1 Ch. 51, cited at p. 137, *post*).

So, too, in construing the provisions of a town planning scheme, it would seem that, where there is a difficulty in reconciling any such provisions with the provisions of the Town Planning Acts, the provisions of the Acts should be treated as paramount and those of the scheme as subordinate. And this would appear to be in accordance with general principles; *cf.* the judgment of Lord Herschell, L.C., in the case of *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 347, at p. 360, in reference to rules which the Board of Trade were

empowered to make under the Patents, Designs and Trade Marks Act, 1883.

In the last-mentioned case it was provided by the Act that the rules "shall be of the same effect as if they were contained in this Act"—language similar to that of s. 54 (5) of the Housing, Town Planning, etc. Act, 1909. Lord HERSCHELL observed: "I own I feel very great difficulty in giving to this provision that they 'shall be of the same effect as if they were contained in this Act,' any other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act."

Relation between map and scheme.—A town planning scheme is required to "refer" to a map; and, when a scheme comes to be construed, regard must be had to the delineations on the map. Should there be any distinct variance between the scheme and the map, it would appear that the provisions of the scheme should prevail; but that otherwise the scheme should be so construed as to give effect to the delineations on the map.

Commons, open spaces, and allotments.—Where a scheme authorises the acquisition or appropriation to any other purpose of land forming part of any common, open space, or allotment, the scheme, so far as it relates to the acquisition or appropriation of such land, is to be provisional only, and is not to have effect unless and until it is confirmed by Parliament (Housing, Town Planning, etc. Act, 1909, s. 73 (1)). Such confirmation is not, however, necessary where the scheme provides for an exchange of land in the manner provided by s. 73 of the Housing, Town Planning, etc. Act, 1909, as to which see p. 47. For the meaning of the words "common, open space, or allotment," see p. 47.

Land near royal palaces or parks.—With respect to the confirmation by the Minister of Health of a scheme including land near a royal palace or park, see *ante*, p. 9.

CHAPTER III.—VARIATION AND REVOCATION OF SCHEMES.

1. Variation of Schemes.

A town planning scheme may be varied by a subsequent scheme prepared or adopted and approved in accordance with Part II. of the Housing, Town Planning, etc. Act, 1909 (s. 54 (6)).

As to the preparation, adoption, and approval of schemes, see Chap. II.

Power is given to the Minister of Health under s. 56 of the Housing, Town Planning, etc. Act, 1909, as amended (see p. 155) to make regulations for regulating the procedure to be adopted with respect to the variation of schemes, but no special regulations in relation thereto appear to have been issued.

With respect to the compensation payable on the variation of a scheme, see pp. 120 to 122.

The only example of an amending scheme yet existing is the East Birmingham Town Planning Scheme Amendment Scheme, dated the 30th May, 1918. It is short, consisting of thirteen clauses only. To the clauses effecting the desired amendments are added the "demolition" and "compensation" clauses, together with the usual general clauses, while for the rest the principal scheme is embodied by reference (see p. 265).

Clause 11 of the amendment scheme referred to contains this reference, and is as follows: "Clauses 27 to 39 of the principal scheme shall apply to and for the purposes of this scheme as if this scheme were part of the principal scheme, and this scheme and the principal scheme shall for the purpose of the application of those clauses be construed as one scheme."

2. Revocation of Schemes.

Revocation by subsequent schemes.—A town planning scheme may be revoked by a subsequent scheme prepared or adopted and approved in accordance with Part II. of the Housing, Town Planning, etc. Act, 1909 (s. 54 (6)).

As to the preparation, adoption, and approval of schemes, see Chap. II.

There is power to make special regulations respecting the procedure relating to the revocation of schemes (see p. 129); but no such regulations have as yet been issued.

Absolute revocation of scheme.—The Minister of Health, on the application of the responsible authority or of any other person appearing to him to be interested, may by order revoke a town planning scheme if he thinks that under the special circumstances of the case the scheme should be so revoked (Housing, Town Planning, etc. Act, 1909, s. 54 (6)). The expression "any other person" will include any local authority or body of persons corporate or unincorporate (Interpretation Act, 1889, s. 19).

With respect to the compensation payable upon the revocation of a scheme by order of the Minister of Health, see pp. 120 to 122.

CHAPTER IV.—CONTENTS OF SCHEMES.

In considering what provisions may properly be included in the contents of a town planning scheme, the general object which must govern the scheme is to be borne in mind. Such general object is stated by s. 54 (1) of the Housing, Town Planning, etc. Act, 1909, to be the "securing proper sanitary conditions, amenity, and convenience in connection with the laying out and use of the land" which is the subject of the scheme and of any neighbouring lands (see p. 152).

Section 55 of the Act of 1909 contemplates that a town planning scheme shall contain "general provisions" and "special provisions."

Model clauses.—Model clauses for schemes were issued by the Minister of Health in February, 1923, and will be found set out in Appendix E.

1. General Provisions.

By sub-s. (1) of s. 55 of the Housing, Town Planning, etc. Act, 1909, the Local Government Board were empowered to prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the fourth schedule to the Act; and it was provided that the general provisions, or set of general provisions appropriate to the area for which a town planning scheme was made, should take effect as part of the scheme, except so far as provision was made by the scheme as approved by the Board for the variation or exclusion of any of those provisions. Sub-s. 2 of s. 55 (see p. 154) dealt with the matters to which the special "provisions"

to be inserted in a scheme should relate, and enacted that there should be special provisions "providing for any matters which might be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision was not made by the general provisions." However, neither the Local Government Board nor their successor, the Minister of Health, appear to have prescribed any sets of general provisions; and, until such provisions are prescribed, town planning schemes will accordingly comprise special provisions only.

The model clauses, set out in Appendix E, are, of course, not to be confused with these "general provisions." The model clauses are examples to imitate for the purpose of forming special provisions; the general provisions will comprise a code or codes of clauses which will take effect as part of individual schemes under sub-s. 1 of s. 55 of the Act of 1909 above stated.

Matters that may be dealt with by general provisions.—It is desirable, however, to peruse Sched. IV. of the Housing, Town Planning, etc. Act, 1909, which sets out the matters that are, in particular, to be dealt with by general provisions when the same are prescribed; for it is clear that all such matters may properly be the subject of special provisions. The matters referred to in Sched. IV. of the Act of 1909 (as amended by s. 48, and Sched. III. of the Housing, Town Planning, etc. Act, 1919) are as follows: (1) streets, roads, and other ways, and stopping up, or diversion of existing highways; (2) buildings, structures, and erections; (3) open spaces, private and public; (4) the preservation of objects of historical interest or natural beauty; (5) sewerage, drainage, and sewage disposal; (6) lighting; (7) water supply; (8) ancillary or consequential works; (9) extinction or variation of private rights of way and other easements; (10) dealing with or disposal of land acquired by the responsible authority or by a local authority; (11) power of entry and inspection; (12) power of the responsible authority to remove, alter, or demolish any obstructive work; (13) power of the responsible authority to make agreements with owners, and of owners to make agreements with one another; (14) power

of the responsible authority or a local authority to accept any money or property for the furtherance of the objects of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888; (15) application with the necessary modifications and adaptations of statutory enactments; (16) carrying out and supplementing the provisions of the Housing, Town Planning, etc. Act, 1909, for enforcing schemes; (17) limitation of time for operation of scheme; (18) co-operation of the responsible authority with the owners of land included in the scheme or other persons interested; (19) charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase, and for that purpose applying, with the necessary adaptations, the provisions of any enactments dealing with charges for improvements of land.

Many of the above matters will be found dealt with in the town planning schemes that have been approved, and in the model clauses issued by the Minister of Health in February, 1923. These model clauses are set out in Appendix E, at pp. 209 to 263, and the notes refer to any important variation in the actual schemes now in operation. These details are also broadly indicated in the table to be found on p. 265.

Procedure with respect to the making of general provisions.—If general provisions should be made, they are to be laid as soon as may be before Parliament (Housing, Town Planning, etc. Act, 1909, s. 64). The Rules Publication Act, 1893, is to apply to such provisions as if they were statutory rules within the meaning of s. 1 of that Act (*ibid.*). Accordingly, at least forty days before making any general provisions notice of the proposal to make the provisions and of the place where copies of the draft rules may be obtained is to be published in the *London Gazette* (Rules Publication Act, 1893, s. 1 (1)). During those forty days any public body may obtain copies of such draft provisions on payment of not exceeding threepence per folio, and any representations or suggestions made in writing by a

public body interested to the Minister of Health are to be taken into consideration by the Minister before settling the rules. On the expiration of the forty days the provisions may be made by the Minister, either as originally drawn or as amended by him, and are to come into operation forthwith or at such time as may be prescribed in the rules (*ibid.* s. 1 (2)).

2. Special Provisions.

Matters in respect of which special provisions are to be made.—In addition to any general provisions that may be applicable to a scheme, special provisions are to be inserted with the following objects: (1) of defining in such manner as may be prescribed by regulations under Part II. of the Housing, Town Planning, etc. Act, 1909, the area to which the scheme is to apply, and the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or Part II. of the Act are to be executed by a local authority (that is, the responsible authority); (2) of providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions; and (3) of suspending, so far as necessary for the proper carrying out of the scheme, any statutory enactments, bye-laws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme (Housing, Town Planning, etc. Act, 1909, s. 55 (2)).

It will be observed that the scheme is required to state the area to which it is to apply, and also the "responsible authority." With respect to the "responsible authority," see p. 6. In certain cases (see s. 55 (3) of the Housing, Town Planning, etc. Act, 1909, p. 154) it will be expedient for the responsible authority to be a joint body. Such joint body will be constituted specially for the purpose by the scheme, which should contain all the necessary provisions in that behalf and prescribe for the joint body their powers and duties.

No regulations appear to have been issued prescribing the manner in which the special provisions are to define the area comprised in the scheme and the responsible authority.

In the absence of any general provisions it will be found that most of the matters which may be provided for by general provisions (see *ante*, pp. 42 and 43) are dealt with by special provisions in the model clauses and in the schemes that have been approved (see table on p. 265). Although the language of s. 55 (2) of the Act of 1909 (*supra*, p. 44) in reference to the special provisions as respects their relation to the general provisions at first sight seems very wide, it is apprehended that the Act intends that the substantial basis of the special provisions should be the same as that for general provisions. General provisions may be prescribed for carrying out the general objects of town planning schemes (namely, the securing proper sanitary conditions, amenity, and convenience in connection with the laying out of the areas which are the subject of the schemes, see p. 1), and in particular for dealing with the matters set out in the fourth schedule of the Act of 1909 (as amended), see p. 166 (Housing, Town Planning, etc. Act, 1909, s. 55 (1)). It would appear that special provisions should pertain to the same or like objects. They are intended to supplement general provisions, if the same are made; not to extend entirely outside their scope.

Suspension of statutory enactments, bye-laws, etc.—In this connection it is to be observed that model clause 55 (see p. 256) contains the following sweeping provision (which is subject to the two provisos in the clause mentioned): "The provisions of any statutory enactment, order, bye-law, or regulations which are in operation in the area shall, in relation to the matters dealt with in this scheme, have effect subject to this scheme, and in so far as inconsistent with the provisions of this scheme shall be suspended." As pointed out in the note to model clause 55, at p. 256, this model clause proceeds upon different lines to the like clause that appears in existing schemes.

It may be observed that bye-laws cannot be waived by a local authority unless the bye-laws themselves give the authority a dispensing power or discretion. (See *Baxter* v. *Bedford*

Corporation (1885), 1 T. L. R. 424; *Reg.* v. *Newcastle-upon-Tyne Corporation* (1889), 53 J. P. 788; *In re McIntosh and Pontypridd Improvement Commissioners* (1892), 61 L. J. Q. B. 164; affirmed (1892), 8 T. L. R. 203.) And so, the approval by a local authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative (*Yabbicom* v. *King*, [1899] 1 Q. B. 444).

On the other hand, where plans comply with the bye-laws and statutory provisions applicable, the local authority may be required to approve the plans without attaching any condition to such approval (*Reg.* v. *Preston Corporation* (1887), 3 T. L. R. 665; *Reg.* v. *Newcastle-upon-Tyne Corporation* (1889), 53 J. P. 788; *Reg.* v. *Tynemouth Rural District Council*, [1896] 2 Q. B. 451; *Rex* v. *Bexhill Corporation* (1911), 75 J. P. 385; *Rex* v. *Preston Rural District Council* (1912), 76 J. P. 65; *Rex* v. *Cambridge Corporation*, [1922] 1 K. B. 250. *Cf.* also *Rex* v. *West Ham Borough Council* (Chap. VIII. p. 115), a case relating to a town planning scheme).

In accordance with the above principles it would likewise appear that a responsible authority may not sanction a departure from the provisions of a scheme, nor add conditions, where their approval is required, if the contemplated work will comply with the provisions of the scheme and any bye-laws and statutory enactments which may be applicable.

Other matters to be dealt with by the scheme.—In addition to the foregoing matters which are to be considered in the preparation of a town planning scheme, it is to be remembered that the scheme must contain provisions with respect to the enforcement of the scheme by the removal of buildings which contravene the scheme and the execution of works which have not been attended to, and with respect to the manner and conditions under which expenses incurred in so enforcing the scheme may be recovered (Housing, Town Planning, etc. Act, 1909, s. 57; see p. 156). See model clause 50 on p. 253.

Further, it is to be considered whether the scheme should limit a time for presenting claims for compensation and betterment on account of the making of the scheme under s. 58 of the Act of 1909 (see p. 156). See model clause 57 on p. 257.

Again, where a piece of land already built upon or a piece of land not likely to be used for building purposes is included in the area of a town planning scheme (see s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919), the scheme may provide for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect.

Commons, open spaces, and allotments.—Where it is desired that a scheme shall authorise the acquisition or appropriation to some other purpose of land forming part of a common, open space, or allotment, and that the scheme shall take effect without confirmation by Parliament, the scheme must provide for giving in exchange for such land other land, not being less in area, certified by the Minister of Health after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public (Housing, Town Planning, etc. Act, 1909, s. 73 (1)). Before giving any such certificate the Minister of Health is to give public notice of the proposed exchange, and to afford opportunities to all persons interested to make representations and objections in relation thereto, and, if necessary, to hold a local inquiry on the subject (*ibid.* s. 73 (2)). Where the scheme authorises such an exchange, the scheme must provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject (*ibid.* s. 73 (3)). The expression "common" includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act (*ibid.* s. 73 (4)).

If a scheme authorises the acquisition or appropriation to any other purpose of land forming part of any common, open

space, or allotment, and does not provide for an exchange of land as above described, the scheme, so far as it relates to the acquisition or appropriation of such land, will not have effect until it is confirmed by Parliament (see p. 38).

The expression "common" for the purposes of the above provisions includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and accordingly includes (1) all lands subject to any rights of common whatsoever, and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons, or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof; (2) all gated and stinted pastures in which the property of the soil is in the owners of the cattlegates or other gates or stints, or any of them; (3) all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattlegates or other gates or stints, or any of them; (4) all lands held, occupied, or used in common, either at all times, or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; (5) all lands in which the property or right of or to the vesture or herbage, or any part thereof, during the whole or any part of the year, or the property or right of or to the wood or underwood growing and to grow thereon, is separated from the property of the soil; (6) all lot meadows and other lands the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise (Inclosure Act, 1845, s. 11).

The expression "common" also includes a town or village green. The inclosure of town and village greens was prohibited by s. 15 of the Inclosure Act, 1845. The terms "town green" and "village green" have not been defined by Act of Parliament; but their essential characteristic is that the inhabitants of the particular locality have an immemorial customary right to use the green for exercise and recreation, including the playing of lawful games (Halsbury's Laws of England, vol. 21, p. 583).

The expression " disused burial ground " is to be found in various enactments, and means " any burial ground which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or order in council " (Open Spaces Act, 1906, s. 20).

With respect to fuel allotments and field garden allotments reference may be made to pp. 593–595 of Halsbury's Laws of England, vol. 4.

3. Town Planning Schemes now in Force.

Owing specially to the fact that no general provisions have been framed for carrying out the general objects of town planning schemes, it will be of particular value to local authorities if they are made acquainted with the general form of the town planning schemes which have already been approved and with the actual provisions which have been inserted in the same. When considering these provisions no doubt regard will be had at the same time to the model clauses issued by the Minister of Health (see Appendix E, pp. 207 to 263).

The following is a list of the schemes already approved with their dates :—

1. The Quinton, Harborne, and Edgbaston Town Planning Scheme, 31st May, 1913.

2. The East Birmingham Town Planning Scheme, 18th August, 1913 (amended by the East Birmingham Town Planning Scheme Amendment Scheme, 30th May, 1918).

3. The Ruislip-Northwood Town Planning Scheme, 7th September, 1914.

4. The Rochdale (Marland) Town Planning Scheme, 20th January, 1915.

5. The North Bromsgrove (Rubery) Town Planning Scheme, 13th December, 1915.

6. The Chesterfield (Chester Street Area) Town Planning Scheme, 4th September, 1916.

7. The Birmingham (North Yardley and Stechford) Town Planning Scheme, 4th April, 1921.

8. The Otley Town Planning Scheme, 14th October, 1921.

9. The Leeds (Buckingham House) Town Planning Scheme, 14th October, 1921.

10. The Hunslet (Templenewsam) Town Planning Scheme, 31st December, 1921.

11. The Wallasey (St. George's Mount) Town Planning Scheme, No. 2, 11th January, 1922.

12. The Luton Town Planning Scheme, 29th November, 1922.

It will be obvious that the circumstances of the different areas which may be the subjects of town planning schemes must vary greatly, with the corresponding result that the provisions of schemes with respect to many matters should show considerable variation. The notes to the model clauses shown in Appendix E, at pp. 207 to 263, refer to any important distinctive features in existing schemes. The table on p. 265 is designed to present in a broad way apparent to the eye the general direction taken in approved schemes.

CHAPTER V.—ENFORCEMENT OF SCHEMES.

The responsible authority may at any time, after giving such notice as may be provided by the town planning scheme and in accordance with its provisions, (*a*) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or (*b*) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the responsible authority that delay in the execution of the work would prejudice the efficient operation of the scheme (Housing, Town Planning, etc. Act, 1909, s. 57 (1)).

Regulations may be made by the Minister of Health under s. 56 of the Housing, Town Planning, etc. Act, 1909 (see p. 155), as respects the procedure to be adopted with respect to any inquiries, reports, notices, or other matters required in relation to the carrying out of a scheme or the enforcement of its provisions, but none such appears to have been issued. However, model clause 50 (p. 253) may be consulted for a typical provision to be inserted in a scheme for the purposes of s. 57 (1) of the Act of 1909.

Determination of questions.—If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, such question is to be referred to the Minister of Health, and is, unless the parties otherwise agree, to be determined by the Minister as arbitrator. The decision of the Minister will be final and conclusive and binding on all persons (Housing, Town Planning, etc. Act, 1909, s. 57 (3)). It will be observed that,

if a question should arise in respect of the matters specified, such question is in any event to be referred to the Minister of Health. All that is left to the parties to agree upon is as to whether the Minister shall determine the question as arbitrator or otherwise. The Minister must determine the question as arbitrator unless the parties agree that he shall act otherwise. If the Minister determines the question as arbitrator the provisions of s. 62 of the Act of 1909 (see Chap. IX. pp. 132, 133) will apply as to the procedure. Ordinarily there is this material difference between the determination by the Minister of Health of a matter as arbitrator and such determination otherwise—namely, that, where the Minister determines as arbitrator, the arbitrator appointed by him may state a case and be compelled by the Court to do so, whereas, if the Minister determines otherwise than as arbitrator, the Court will not interfere with his decision, and no case may be stated. The decision of the Minister, however, with respect to questions arising upon s. 57 of the Act of 1909 as to whether a building or work contravenes a town planning scheme, or as to whether any provision of a scheme is not complied with in the erection or carrying out of any such building or work, is stated by the concluding words of sub-s. 3 of s. 57 to be "final and conclusive and binding on all persons." But this enactment, it would appear, does not prevent an arbitrator, appointed by the Minister of Health when determining a matter as arbitrator, from stating a special case for the opinion of the Court under s. 19 of the Arbitration Act, 1889; or from stating his award in the form of a special case for the opinion of the Court under s. 7 (*b*) of that Act. It would seem that under s. 19 of the Arbitration Act, 1889, the arbitrator might be compelled before the proceedings have come to an end by a completed award to state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference (*cf. In re County Council of Kent and Sandgate Local Board*, [1895] 2 Q. B. 43).

The jurisdiction of the Minister of Health is confined to the question which is referred to him; he may not give a determination on extraneous matters (*cf. Board of Education* v. *Rice*, [1911] A. C. 179).

Recovery of expenses.—Any expenses incurred by a responsible authority under s. 57 of the Housing, Town Planning, etc. Act, 1909, may be recovered from the persons in default in such manner and subject to such conditions as may be provided by the scheme (s. 57 (2)). The tribunal deputed by the scheme to adjudicate upon such expenses will not be able to determine any question arising under s. 57 (1) (*a*) as to whether any building or work contravenes the scheme, or whether any provision of the scheme is not complied with in the erection or carrying out of any such building or work; such a question must be referred to the Minister of Health as above described. It seems, however, that the tribunal deputed by the scheme will have to decide any question that may arise under s. 57 (1) (*b*) as to whether any work purported to have been executed by the responsible authority thereunder was in fact work which it was the duty of the person proceeded against to execute under the scheme.

See model clause 53 (p. 255) for a typical provision as to the recovery of expenses under s. 57 of the Act of 1909.

CHAPTER VI.—DEFAULT IN MAKING AND EXECUTING TOWN PLANNING SCHEMES.

Under s. 61 of the Housing, Town Planning, etc. Act, 1909, and s. 47 of the Housing, Town Planning, etc. Act, 1919, powers are given to the Minister of Health to compel local authorities to prepare schemes in appropriate cases and to enforce the execution of schemes in cases of default.

Default in preparation of schemes.—Under s. 47 (1) of the Housing, Town Planning, etc. Act, 1919, where the Minister of Health is satisfied, after holding a public local inquiry, that a town planning scheme ought to be made by a local authority as respects any land in regard to which a town planning scheme may be made under the Housing, Town Planning, etc. Act, 1909, the Minister may, by order, require the local authority to prepare and submit for his approval such a scheme, and, if the scheme is approved by the Minister, to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, and for executing any works which, under the scheme or under Part II. of the Act of 1909, the authority are required to execute. The order of the Minister of Health is to have the same effect as a resolution of the local authority deciding to prepare a scheme (Housing, Town Planning, etc. Act, 1919, s. 47 (2)); so that, where the Minister makes an order under the foregoing provision, no resolution of the local authority is necessary. As to what land may be utilised for town planning schemes, see pp. 3 to 5. As to the holding of local inquiries, see Chap. IX. pp. 135 to 138.

It will be observed that the above provision contemplates that the local authority, who are to prepare the scheme, are the responsible authority for enforcing its observance and for executing works under the scheme. The provision is not

framed to meet cases where the land capable of being utilised for a scheme is partially or wholly outside the area of the local authority who might be expected to prepare a scheme with regard to it, and where such local authority would not be the appropriate responsible authority (see pp. 8, 9). Nor is it framed to meet the case where a town planning scheme has been made and there is merely a subsequent failure in enforcing its observance or in executing the requisite works. As to the remedy in such a case, see under "Default of responsible authority," *infra.*

Where an order is made upon a local authority under the above provision and the local authority fail to prepare a scheme to the satisfaction of the Minister within such time as may be prescribed by the order, or to enforce the observance of the scheme or any provisions thereof effectively, or to execute any works which under the scheme or under Part II. of the Act of 1909 the authority are required to execute, the Minister may himself act, or in the case of a borough or other urban district the population of which is less than 20,000, or of a rural district, may, if he thinks fit, by order, empower the county council to act, in the place and at the expense of the local authority (Housing, Town Planning, etc. Act, 1919, s. 47 (3)).

The Minister of Health may himself act or empower the county council to act in the cases specified, it will be observed, where the local authority fail to prepare a scheme "to the satisfaction of the Minister" within such time as may be prescribed by the order. If, therefore, the scheme prepared by the local authority in the first instance does not meet with the approval of the Minister, the local authority must make the modifications he requires if they desire to avoid the intervention of the Minister or the county council, as the case may be.

The Minister of Health has additional powers under s. 61 of the Housing, Town Planning, etc. Act, 1909, with respect to the making of schemes in proper cases; but he will probably not resort to such powers where he can effectively act under s. 47 of the Act of 1919. Under s. 61 (1) of the Act of 1909, if the Minister is satisfied, after holding a public local inquiry, that a local authority have failed to take the requisite steps for

having a satisfactory town planning scheme prepared and approved in a case where a scheme ought to be made, or have failed to adopt a scheme proposed by owners of land in a case where the scheme ought to be adopted, or have unreasonably refused to consent to any modifications or conditions imposed by the Minister, he may, as the case requires, order the local authority to prepare and submit for his approval such a town planning scheme, or to adopt the scheme, or to consent to the modifications or conditions so imposed. Any such order may be enforced by mandamus (Housing, Town Planning, etc. Act, 1909, s. 61 (3)). Where it is represented that a local authority have failed to adopt a scheme, the Minister of Health, in lieu of making an order as above, may approve the proposed scheme, subject to such modifications or conditions, if any, as he thinks fit ; and thereupon the scheme will have effect as if it had been adopted by the local authority and approved by the Minister (*ibid.* s. 61 (1)). As to the holding of local inquiries by the Minister of Health, see Chap. IX. pp. 135 to 138. And as to the effect of orders of the Minister, see pp. 137, 138.

See also Chap. XI. as to the provisions of s. 46 of the Housing, Town Planning, etc. Act, 1919, which, as amended, casts upon certain local authorities a statutory duty to prepare town planning schemes in respect of land within their areas by 1st January, 1929.

Default of responsible authority.—If the Minister of Health is satisfied, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed, or any provisions thereof, or to execute any works which under the scheme or Part II. of the Act of 1909 the authority is required to execute, the Minister may order the authority to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, or for executing such works (Housing, Town Planning, etc. Act, 1909, s. 61 (2)). Any such order may be enforced by mandamus (*ibid.* s. 61 (3)). As to the holding of local inquiries by the Minister of Health, see Chap. IX. pp. 135 to 138. And as to the effect of orders of the Minister, see pp. 137, 138.

CHAPTER VII.—ACQUISITION OF LAND FOR PURPOSES OF TOWN PLANNING SCHEMES.

1. General.

Owing to the number of statutory provisions involved the procedure with respect to the acquisition of land for the purposes of town planning schemes has become somewhat complex. It is proposed first to refer to such provisions generally, and then to analyse them under the headings "Purchase of land by agreement" and "Purchase of land compulsorily" respectively.

Acquisition of land by the responsible authority.—By s. 60 (1) of the Housing, Town Planning, etc. Act, 1909, the responsible authority (that is, the authority responsible for enforcing the scheme and for the execution of works thereunder, see p. 6) may purchase any land comprised in the scheme "by agreement or be authorised to purchase any such land compulsorily in the same manner and subject to the same provisions (including any provision authorising the Minister of Health to give directions as to the payment and application of any purchase money or compensation) as a local authority may purchase or be authorised to purchase land situate in an urban district for the purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by ss. 2 and 45 of the Housing, Town Planning, etc. Act, 1909."

Part III. of the Housing of the Working Classes Act, 1890, relates to the provision of houses and cottages for the working classes, and by s. 57 (1) of the Act it was provided that, for the purposes of the acquisition of land under Part III., ss. 175 to 178 of the Public Health Act, 1875, should apply. Section 176 (1) of the Public Health Act, 1875, incorporated the Lands Clauses

Consolidation Acts, 1845, 1860, and 1869, except the provisions relating to access to the special Act and s. 127 of the Lands Clauses Consolidation Act, 1845. The rest of s. 176 related to procedure respecting the compulsory purchase of land; but instead thereof there was substituted another form of procedure by s. 2 (1) (2) of the Housing, Town Planning, etc. Act, 1909. Thereby a local authority may be authorised to purchase lands compulsorily for the purposes of Part III. of the Housing of the Working Classes Act, 1890, by means of an order submitted by the local authority to the Minister of Health and confirmed by him in accordance with the provisions contained in Sched. I. of the Act of 1909. Article (4) of Sched. I. required the order to incorporate the Lands Clauses Acts (except s. 127 of the Lands Clauses Act, 1845) and ss. 77 to 85 of the Railway Clauses Consolidation Act, 1845, with the important modification that any question of compensation should be determined by arbitration. The Acquisition of Land (Assessment of Compensation) Act, 1919, has now introduced further important provisions respecting the assessment of compensation and the mode of arbitration.

Section 60 of the Housing, Town Planning, etc. Act, 1909, enabled land to be acquired by a responsible authority in the same manner as a local authority might acquire land "in an urban district" for the purposes of Part III. of the Act of 1890. These words apparently had reference to provision (7) in Sched. I. of the Act of 1909, which did not relate to a rural district. However, provision (7) was repealed—except in so far as the schedule might be applied to some other enactment—by s. 11 of the Housing, Town Planning, etc. Act, 1919. Accordingly the words "in an urban district" do not now appear to be material.

Acquisition of land by local authority not being responsible authority.—Where land included in the area of a local authority within the meaning of Part II. of the Housing, Town Planning, etc. Act, 1909 (see p. 5), is comprised in a town planning scheme, and such local authority are not the responsible authority, the local authority may purchase or be authorised to purchase that land in the same manner as the responsible authority (Housing, Town Planning, etc. Act, 1909, s. 60 (2)).

The provisions above referred to, and which are about to be analysed with respect to the purchase of lands by a responsible authority, will apply accordingly.

Acquisition of land by Minister of Health.—Where the Minister of Health is satisfied that a local authority, or two or more local authorities jointly, are prepared to purchase and develop any land in regard to which a town planning scheme may be made for the purpose of such a scheme for the area in which the land is situate, in accordance with a scheme approved by the Minister, and have funds available for the purpose, he may, with the consent of the Treasury and after consultation with the Board of Trade, the Minister of Agriculture and Fisheries, and the Minister of Transport, acquire the land on behalf of the authority either by compulsion or by agreement in any case in which it appears to him necessary or expedient so to do for the purpose of securing the development of the land, and may do all such things as may be necessary to vest the land so acquired in the local authority (Housing (Additional Powers) Act, 1919, s. 10 (1)).

The language of the above provision is not of the clearest; but the provision appears to be designed simply to confer upon the Minister of Health the power to acquire land on behalf of a local authority which such authority might itself purchase for the purposes of a scheme.

"Land in regard to which a town planning scheme may be made" is defined by s. 54 of the Housing, Town Planning, etc. Act, 1909, to mean "land which is in course of development or appears likely to be used for building purposes" (see p. 4). See also s. 21 of the Housing, etc. Act, 1923, p. 175.

The provisions of the Housing Acts, 1890 to 1919, relating to the powers of a local authority to acquire land for the purposes of Part III. of the Housing of the Working Classes Act, 1890, are to apply for the purposes of the acquisition of land by the Minister on behalf of a local authority; and, in exercising his powers of acquiring land, he is subject to the same conditions as are applicable to the acquisition of land under the Housing Acts, 1890 to 1919, by a local authority (Housing (Additional Powers) Act, 1919, s. 10 (2)). It accordingly appears that the

Minister of Health, in acquiring lands on behalf of a local authority for the purposes of a town planning scheme, will be subject to the same statutory limitations as those to which the local authority would be subject with respect to the land he may purchase, and must purchase the land subject to the same statutory conditions. The following notes appearing under the headings " Purchase of land by agreement " and " Purchase of land compulsorily," so far as the same are applicable to purchases by the Minister of Health, will control such purchases accordingly.

The provisions of the Lands Clauses Acts.—It is, of course, impracticable to enter here into a full consideration of all the provisions of the Lands Clauses Acts. It is hoped, however, to deal with them sufficiently to make clear the general procedure relating to the acquisition of land by a responsible authority. The Acts, it may be observed, are set out at full length in vol. ii. of Lumley's Public Health.

2. Purchase of Land by Agreement.

As will be observed from what has been stated above, ss. 175 to 178 of the Public Health Act, 1875, apply to the purchase by agreement of lands comprised in a town planning scheme, and by s. 176 the provisions of the Lands Clauses Acts (except the provisions relating to access to the special Act and s. 127 of the Lands Clauses Consolidation Act, 1845) are incorporated for that purpose.

With the consent of, and subject to any conditions imposed by, the Minister of Health, the responsible authority may purchase land by agreement notwithstanding that the land is not immediately required for the purposes of the scheme (Housing, Town Planning, etc. Act, 1909, s. 2 (3)).

" *Land* " *that may be taken.*—Section 60 of the Housing, Town Planning, etc. Act, 1909, authorises the purchase of land for the purposes of a town planning scheme. The meaning to be given to the term " land," it would appear, is that contained in s. 3 of the Lands Clauses Consolidation Act, 1845, namely, " messuages, lands, tenements, and heredita-

ments of any tenure." The term "land" accordingly includes buildings.

Land which is the site of an ancient monument or other object of archæological interest may not be purchased by the responsible authority (Housing, Town Planning, etc. Act, 1909, s. 45). As to the power of county and borough councils to acquire ancient monuments or become the guardians thereof, see p. 67.

By s. 178 of the Public Health Act, 1875, as applied to town planning schemes, the Chancellor and Council of the Duchy of Lancaster are authorised (without prejudice to the rights of any lessee, tenant, or occupier) to sell to a responsible authority any lands belonging to His Majesty in right of the Duchy which the responsible authority may deem it expedient to purchase.

The purchase.—Under s. 6 of the Lands Clauses Consolidation Act, 1845, the responsible authority may agree with the owners of lands, and with all parties having any estate or interest therein or enabled to sell and convey the same, for the absolute purchase for a money consideration of such lands, estates, and interests. Sections 10 and 11 of the Act (amended by the Lands Clauses Consolidation Acts Amendment Act, 1860) provide for the sale of land in consideration of an annual rent-charge.

See ss. 76 to 79 of the Lands Clauses Consoldiation Act, 1845, as to the procedure where the owner refuses to accept the purchase-money, or neglects or fails to make out a title to the lands, or if he refuses to convey or release the lands as directed.

Parties specially authorised to sell.—Section 7 of the Act of 1845 authorises the sale and conveyance or release of lands by corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and parties for the time being entitled to the receipt of the rents and profits of lands. Section 8 confers on such parties power to enfranchise copyholds and to release lands from any

rent-charge or encumbrance, and to agree for the apportionment of any such rent-charge or encumbrance. Section 9 relates to the method of assessment of the purchase-money or compensation in respect of lands held by parties under disability, and not having power to sell except under the Lands Clauses Acts, in cases where there is no reference to arbitration.

Under s. 69 of the Lands Clauses Consolidation Act, 1845, the purchase-money in respect of land payable to a party under disability, and not entitled to sell the same except under the provisions of the Lands Clauses Acts, is—where such purchase-money exceeds £200—to be paid into the Bank of England in the manner described in such section and to be applied to the purposes therein mentioned upon an order of the High Court. If the purchase-money does not amount to £200 and exceeds £20 the sum is to be paid into the Bank of England, and applied in the same manner as sums of £200 and upwards, or to two trustees to be nominated by the parties entitled to the rents or profits of the lands, or, in case of the coverture, infancy, lunacy, or other incapacity of such parties, by their respective husbands, guardians, committees, or trustees (Lands Clauses Consolidation Act, 1845, s. 71). If the money is paid to trustees they must apply the same to like purposes to those applicable to money paid into the Bank of England, but no order of Court is necessary (*ibid.*). If the money payable does not exceed £20, the same is to be paid to the parties entitled to the rents and profits of the lands or to their husbands, guardians, committees, or trustees, as the case may be (s. 72).

As to the subsequent conveyance of the lands and the procedure upon default, see s. 75 of the Lands Clauses Consolidation Act, 1845.

A specific provision is contained in s. 5 of the Housing, Town Planning, etc. Act, 1909 (referred to in s. 60 of that Act relating to town planning), enabling purchase-money in respect of lands taken by the responsible authority from a local authority, instead of being paid into Court, to be paid and applied as the Minister of Health may determine—the decision of the Minister as to such payment and application being final and conclusive.

Leases.—With respect to lands subject to leases, see ss. 119–121 of the Lands Clauses Consolidation Act, 1845, at pp. 81, 82.

Intersected lands, copyholds, common lands, mortgaged lands, and rent-charges.—Sections 93 and 94 of the Lands Clauses Consolidation Act, 1845, relate to intersected lands; ss. 95 to 98 to copyholds; ss. 99 to 107 to compensation in respect of common lands; ss. 108 to 114 to the redemption of mortgages, and ss. 115 to 118 to the release of lands from rent and other charges.

Disposal of superfluous land.—Section 127 of the Lands Clauses Consolidation Act, 1845, which requires superfluous lands to be sold, is expressly excepted by s. 176 of the Public Health Act, 1875, from applying to the purchase of lands under the latter Act. But s. 175 of the Public Health Act, 1875 (as applied to town planning), provides that lands acquired by a responsible authority, and not required for the purpose for which they were acquired, are (unless the Minister of Health otherwise directs) to be sold at the best price obtainable. It appears that the power of the Minister of Health is limited to the delaying of the sale for reasons appearing to him desirable; the Minister may not authorise the use of lands for a purpose entirely different from that in respect of which the land was authorised to be acquired (*Attorney-General* v. *Hanwell Urban District Council*, [1900] 2 Ch. 377). Sections 128 to 131 of the Lands Clauses Consolidation Act, 1845, contain further provisions as to the sale of superfluous lands. It is also to be observed that s. 40 of the Housing, Town Planning, etc. Act, 1909, provides that "notwithstanding anything contained in the Housing of the Working Classes Act, 1890, it shall not be obligatory upon a local authority to sell and dispose of any lands or dwellings acquired or constructed by them for any of the purposes of the Housing Acts." However, for the reasons given at pp. 84 to 86, it is thought that the expression "Housing Acts" does not embrace Part II. of the Act of 1909, which relates to town planning, so that s. 40 of that Act is not applicable to land acquired for the purposes of a town planning scheme.

It remains to be noted that the above observations are subject to any provisions which may be contained in a town planning scheme. It is provided specifically by s. 55 of the Housing, Town Planning, etc. Act, 1909, and the fourth schedule of that Act, that a scheme may contain provisions as to "dealing with or disposal of land acquired by the responsible authority or by a local authority" (*cf.* model clause 47, p. 252).

Temporary user of land.—Where the responsible authority purchase land which is not immediately required for the purposes of their town planning scheme they may temporarily use it or permit it to be used for some other lawful purpose; but they should take care to prevent any rights being acquired over the land by the public or otherwise which would prevent or interfere with its use when required for the purposes of the scheme (*Attorney-General* v. *Teddington Urban District Council*, [1898] 1 Ch. 66). See also s. 177 of the Public Health Act, 1875, as to the letting of lands, with the consent of the Minister of Health, as and when they can be conveniently spared.

Liability to make good deficiency in land tax and poor rate.—In the case of *St. Leonard, Shoreditch* v. *London County Council*, [1895] 2 Q. B. 104; 59 J. P. 423, it was held that s. 133 of the Lands Clauses Consolidation Act, 1845—which requires the deficiency in the assessments of land tax and poor rate, arising from lands being taken for the purposes of statutory works, to be made good—applied to lands taken by agreement under Part III. of the Housing of the Working Classes Act, 1890. Such deficiency, it would appear, must be made good in respect of lands taken by agreement for the purposes of a town planning scheme; since, as it is submitted, s. 34 of the Housing, Town Planning, etc. Act, 1909 (which provides that s. 133 of the Lands Clauses Consolidation Act, 1845, is not to apply in the case of lands taken under the Housing Acts), does not apply to Part II. of the Act of 1909, relating to town planning. A full discussion of this point and notes on the effect of s. 133 will be found at pp. 83 to 86.

Compensation in respect of lands "injuriously affected."—Under s. 68 of the Lands Clauses Consolidation Act, 1845, compensation is recoverable in respect of lands "injuriously

affected " by the works of the responsible authority upon lands taken by that authority (see p. 95).

3. Purchase of Land compulsorily.

Before the responsible authority (including a local authority where land within its area is comprised in a town planning scheme and the local authority is not the responsible authority (see p. 58)) may actually purchase land compulsorily for the purpose of a scheme, an authority so to do must first be obtained. This authority, as has already been pointed out (see p. 58), takes the form of a confirmation by the Minister of Health of an order submitted to him by the responsible authority (Housing, Town Planning, etc. Act, 1909, s. 2). The procedure relating to the submission of this order and its confirmation is contained in the first schedule of the Housing, Town Planning, etc. Act, 1909 (as amended by the Housing, Town Planning, etc. Act, 1919) and " The Housing Acts (Compulsory Purchase) Regulations, 1919," made by the Minister of Health under the first schedule of the Act of 1909. In these regulations the order is referred to as " the compulsory order."

(*a*) *Authority to purchase Land compulsorily.*

Form of the order.—The order submitted by the responsible authority to the Minister of Health for his confirmation, empowering the responsible authority to purchase land compulsorily, must be in the form set forth in the schedule to the Housing Acts (Compulsory Purchase) Regulations, 1919, or in a form substantially to the like effect (Housing, Town Planning, etc. Act, 1909, Sched. I. (4); Housing Acts (Compulsory Purchase) Regulations, 1919, article 3).

It will be found that there are four clauses in such form. By the first clause the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement are, subject as thereinafter provided by the order, put in force as respects the purchase by the responsible authority of the lands described in the schedule to the order

for the purpose of the town planning scheme. The second clause is in the following terms: "The Lands Clauses Acts (except s. 127 of the Lands Clauses Consolidation Act, 1845), as modified, varied, or amended by the first schedule to the Housing, Town Planning, etc. Act, 1909, the Housing, Town Planning, etc. Act, 1919, and the Acquisition of Land (Assessment of Compensation) Act, 1919, and ss. 77 to 85 of the Railways Clauses Consolidation Act, 1845, are, subject to the necessary adaptations, incorporated with this order, and the provisions of those Acts shall apply accordingly."

The third clause will only be inserted in the order where glebe land or other land belonging to an ecclesiastical benefice is proposed to be taken for the purposes of the town planning scheme. This clause is inserted in such a case in accordance with article (12) of the first schedule to the Housing, Town Planning, etc. Act, 1909, and provides that the sums agreed upon or awarded for the purchase of such land or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

The fourth clause provides that the order shall come into operation as from the date of its confirmation by the Minister of Health.

The schedule to the order refers to a plan, relating to the lands proposed to be taken, deposited at the offices of the responsible authority; and requires an enumeration to be inserted of the quantity, description and situation of such lands with the names of the owners and lessees, or reputed owners and lessees, and occupiers.

"*Land*" *that may be taken.*—As to the meaning of the expression "land," see p. 60.

Land which is the site of an ancient monument or other object of archæological interest may not be purchased by the responsible authority, nor may land be compulsorily purchased

which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or which forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house (Housing, Town Planning, etc. Act, 1909, s. 45).

"Land which is the site of an ancient monument or other object of archæological interest" may not be acquired by the responsible authority, either by agreement or compulsorily, for the purposes of a town planning scheme. Under the Ancient Monuments Consolidation and Amendment Act, 1913, however, power is given to county and borough councils and the common council of the city of London to acquire ancient monuments situate in or in the vicinity of their area, or to become the guardians of such monuments. By s. 22 of that Act it is enacted that the expression "monument" in the Act includes "any structure or erection, other than an ecclesiastical building which is for the time being used for ecclesiastical purposes"; and the expression "ancient monument" includes "any monument specified in the schedule to the Ancient Monuments Protection Act, 1882, and any other monuments or things which, in the opinion of the Commissioners of Works, are of a like character, and any monument or part or remains of a monument, the preservation of which is a matter of public interest by reason of the historic, architectural, traditional, artistic, or archæological interest attaching thereto, and the site of any such monument, or of any remains thereof; and any part of the adjoining land which may be required for the purpose of fencing, covering in, or otherwise preserving the monument from injury," and also includes "the means of access thereto." The monuments specified in the schedule to the Ancient Monuments Protection Act, 1882, are various ancient remains in the British Isles described by name and locality.

It will be observed that land which forms "part of any park, garden or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house," may not be compulsorily purchased by the responsible authority. It

appears from the context that the "park, garden, or pleasure ground" referred to is a private one enjoyed in connection with a dwelling-house. This also appears from the definition of "open space" in s. 73 of the Housing, Town Planning, etc. Act, 1909 (see p. 161), which contains special provisions as to the acquisition or appropriation to any other purposes of land forming part of an open space. An "open space" so defined includes land laid out as a public garden or used for the purposes of public recreation. See model clause 35 (4) (*b*), p. 244, respecting the purchase by agreement by the responsible authority of private open spaces reserved as such by the scheme.

With respect to the expression "amenity," see Chap. I. pp. 1 to 3.

Crown lands may not be taken compulsorily.

Under s. 92 of the Lands Clauses (Consolidation) Act, 1845, a party cannot be required to sell or convey a part only of a house or other building or manufactory, if such party is willing and able to sell the whole.

Publication of order.—Before submitting a compulsory order to the Minister of Health for confirmation, the responsible authority must cause the same to be published by advertisement in two successive weeks in one or more of the local newspapers circulating in their district and in the parish or parishes in which the land to which the compulsory order relates is situated (Housing Acts (Compulsory Purchase) Regulations, 1919, article 4 (1)).

The advertisements must be headed respectively "First Advertisement" and "Second and Last Advertisement," and the first advertisement must be published not later than the seventh day after the making of the compulsory order (*ibid.* article 4 (2)).

Each of the advertisements must contain, in addition to a copy of the compulsory order, a notice setting out the following particulars: (*a*) a statement that any objection to the compulsory order must be presented to the Minister of Health within the period of fourteen days from and after the date of the publication of the first advertisement; and (*b*) a statement of the period, times, and place or places during and at which the

deposited plan referred to in the schedule to the compulsory order may be inspected by or on behalf of any person interested in the land to which the compulsory order relates (*ibid.* article 4 (3)).

Where the land to which the compulsory order relates is situate within a rural district and does not exceed five acres in extent, the procedure with respect to the publication of the order is simplified. In such a case there will be sufficient publication if, not later than the seventh day after the making of the order, one copy is affixed to the land in some conspicuous position and a further copy to a notice board outside the offices of the local authority, each of the copies having appended to it a notice setting out the particulars specified in the last paragraph. The date on which the notices are so affixed is to be treated as "the date of the publication of the first advertisement" (Housing Acts (Compulsory Purchase) Amendment Regulations, 1920, article 2).

Deposit of plan.—The plan showing the lands proposed to be taken referred to in the schedule to the compulsory order must be deposited by the responsible authority not later than the seventh day after the making of the compulsory order at a place convenient for the purposes of inspection, and must be kept deposited thereat for a period not being less than fourteen days from the date of the publication of the first advertisement. The plan must be open for inspection by any person interested or affected, without payment of any fee, at all reasonable hours on any week-day during such period. The responsible authority must also make suitable provision for affording to any person inspecting the plan any necessary explanation or information in regard thereto (Housing Acts (Compulsory Purchase) Regulations, 1919, article 4 (4)).

Notice of order to be given to owners, lessees, and occupiers.—The responsible authority must, not later than the seventh day after the making of the compulsory order, cause notice thereof to be given to every owner, lessee, and occupier of the land to which the order relates, and every such notice must include a copy of the order, to which must be appended a notice containing the particulars (*a*) and (*b*) required to be inserted

in the public advertisements (Housing Acts (Compulsory Purchase) Regulations, 1919, article 5 (1)). For the particulars (*a*) and (*b*), see p. 68.

The notice must be served by one of the modes (*a*) (*b*) (*c*) (*d*) (*e*) relating to the service of the order after confirmation (see p. 72).

It may be presumed that under the expression "every owner, lessee, and occupier" should fall "all parties interested" in the land entitled to a notice to treat under s. 18 of the Lands Clauses Consolidation Act, 1845, and accordingly all parties necessary to convey all legal and equitable interests in the land (see pp. 61 and 73).

Period within which objections to order may be made.—An objection to a compulsory order may be presented to the Minister of Health by a person interested in the land to which the order relates within the period of fourteen days from and after the date of the publication of the first advertisement of the order (Housing Acts (Compulsory Purchase) Regulations, 1919, article 6).

Inquiry where objection made to order.—If an objection has been presented to a compulsory order and has not been withdrawn, the Minister of Health is forthwith to cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the responsible authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow may appear and be heard at the inquiry (Housing, Town Planning, etc. Act, 1909, Sched. I. (6)).

"All persons interested in the land" include, it may be presumed, "all parties interested" in the land entitled to a notice to treat under s. 18 of the Lands Clauses Consolidation Act, 1845, and accordingly all parties necessary to convey all legal and equitable interests in the land (see p. 61).

With respect to inquiries by the Minister of Health generally, see pp. 135 to 138.

At an inquiry there are entitled to be heard, by themselves or their agents, any authorities or parties authorised to appear; and witnesses are to be heard, but not, except where the

Minister of Health otherwise directs, counsel or expert witnesses (Housing, Town Planning, etc. Act, 1909, Sched. I. (8)).

Confirmation of order by Minister of Health.—If within the period allowed (that is, fourteen days from and after the date of the publication of the first advertisement of the compulsory order) no objection to the order has been presented to the Minister of Health by a person interested in the land, or if every such objection has been withdrawn, the Minister shall confirm the order unless of opinion that the land is unsuited for the purpose for which it is proposed to be acquired (Housing, Town Planning, etc. Act, 1909, Sched. I. (6); Housing, Town Planning, etc. Act, 1919, s. 11 (2)).

Where there is opposition to the compulsory order the Minister of Health must, before confirming the same, consider the report of the person by whom a public inquiry is held; and the Minister must not confirm the order if of opinion that the land is unsuited for the purpose for which it is proposed to be acquired (Housing, Town Planning, etc. Act, 1919, s. 11 (2)).

The Minister of Health may confirm the order either without modification or subject to such modifications as he thinks fit (Housing, Town Planning, etc. Act, 1909, Sched. I. (2)).

Effect of confirmation of order.—An order is of no force unless and until it is confirmed by the Minister of Health; but, when so confirmed, "shall become final and have effect as if enacted in this Act; and the confirmation by the Minister shall be conclusive evidence that the requirements of this Act have been complied with and that the order has been duly made and is within the powers of this Act" (Housing, Town Planning, etc. Act, 1909, Sched. I. (2)).

The intention of this sweeping provision is to place upon the Minister of Health the responsibility of ascertaining that all the requirements of the Act have been complied with and to withdraw altogether from the cognisance of the Courts of Justice all questions as to the services of notices and other steps (*Ex parte Ringer* (1909), 73 J. P. 436; *Rex* (*Eustace*) v. *Local Government Board for Ireland* (1910), 44 Ir. L. T. R. 176, not following *Rex* (*Whyte*) v. *Local Government Board for Ireland* (1909), 43 Ir. L. T. R. 216).

Service of order after confirmation.—The responsible authority must, as soon as practicable after the confirmation of the order, cause a copy of the order as confirmed to be served on every owner, lessee, and occupier of the land to which the order relates (Housing Acts (Compulsory Purchase) Regulations, 1919, article 7 (1)).

The order, as confirmed, may be served by one of the following modes: (*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent; (*b*) by leaving the same at the usual or last known place of abode of such person as aforesaid; (*c*) by post as a registered letter addressed to the usual or last known place of abode of such person; (*d*) in any case to which the three preceding paragraphs are inapplicable, by affixing the notice or other document upon some conspicuous part of the land to which the notice or document relates; or (*e*) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post as a registered letter addressed to such clerk or secretary at his office.

Copies of order and plan to be furnished to interested persons.—Copies of the original order and of the order as confirmed must be furnished by the responsible authority, free of charge, to persons interested in the land upon application. A copy of any plan to which reference is made in the order as confirmed must also be furnished upon payment of the reasonable cost of preparing the same (Housing Acts (Compulsory Purchase) Regulations, 1919, articles 5 (2), 7 (2)).

(*b*) *Procedure after Authority obtained.*

Subject to any modifications the Minister of Health may have made in the order submitted to him by the local authority, the confirmation of the order by the Minister will have the effect of putting in force, as respects the lands described in the schedule to the order, the provisions of the Lands Clauses Acts

with respect to the purchase and taking of land otherwise than by agreement (except s. 127 of the Lands Clauses Consolidation Act, 1845, and except so far as these Acts are amended by the first schedule to the Housing, Town Planning, etc. Act, 1909, the Housing, Town Planning, etc. Act, 1919, and the Acquisition of Land (Assessment of Compensation) Act, 1919), and the provisions contained in ss. 77 to 85 of the Railway Clauses Consolidation Act, 1845. Such provisions, it will be observed (see the form of the order, p. 65), are, subject to the necessary adaptations, incorporated with the order. In construing the provisions of the Lands Clauses Acts so incorporated, the Housing, Town Planning, etc. Act, 1909, and the order are to be deemed to be "the special Act" and the local authority are to be deemed to be "the promoters of the undertaking" (Housing, Town Planning, etc. Act, 1909, Sched. I. (11)).

Limit of time for compulsory purchase.—The compulsory purchase of land may not be exercised after the expiration of three years from the confirmation of the order authorising the purchase (Lands Clauses Consolidation Act, 1845, s. 123; Housing, Town Planning, etc. Act, 1909, Sched. I. (4)).

Where periods are prescribed for the taking of land for specific purposes and not for others, the period for the exercise of the powers with regard to which no time is fixed will be three years (*Seymour* v. *London and South Western Railway Co.* (1859), 5 Jur. (N.S.) 753).

The service of a notice to treat within the period of three years is a sufficient exercise of the compulsory powers to prevent the application of s. 123 of the Lands Clauses Consolidation Act, 1845 (*Salisbury* (*Marquis of*) v. *Great Northern Railway Co.* (1852), 17 Q. B. 840; *Tiverton and North Devon Railway Co.* v. *Loosemore* (1884), 9 App. Cas. 480).

Notice to treat.—When the responsible authority require any of the lands they are authorised by the order to purchase, they must give notice to all the parties interested in such lands or to the parties enabled to sell and convey or release the same (see p. 61) or to such of them as, after diligent inquiry, are known to the responsible authority. By the notice the responsible authority are to demand from the parties the particulars

of their estate and interest in the lands and of the claims made by them in respect thereof. The notice must state the particulars of the lands required and that the responsible authority are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the authorised works (Lands Clauses Consolidation Act, 1845, s. 18).

The notices must either be served personally on the parties or left at their last usual place of abode, if any such can be found after diligent inquiry. If any party is absent from the United Kingdom or cannot be found after diligent inquiry, the notice is also to be left with the occupier of the lands or, if there is no occupier, it is to be affixed upon some conspicuous part of the lands (Lands Clauses Consolidation Act, 1845, s. 19). If a party is a corporation aggregate the notice is to be left at the principal office of business of the corporation, or, if no such office can after diligent inquiry be found, it is to be served on some principal member, if any, of the corporation ; and the notice is also to be left with the occupier of the lands, or, if there is no occupier, it is to be affixed upon some conspicuous part of the lands (*ibid.* s. 20).

Section 18 requires notice to treat to be given to " all the parties interested " in the lands. This includes all the parties necessary to convey all the interests in the land acquired, whether legal or equitable, as, for example, mortgagees (*Martin* v. *London, Chatham and Dover Railway Co.* (1866), 1 Ch. App. 501 ; *Rogers* v. *Kingston-upon-Hull Dock Co.* (1864), 11 L. T. 463 ; *Re King's Leasehold Estates, Ex parte East of London Railway Co.* (1873), L. R. 16 Eq. 521 ; *Sweetman* v. *Metropolitan Railway Co.* (1864), 1 H. & M. 543 ; *Birmingham and District Land Co.* v. *London and North Western Railway Co.* (1888), 40 Ch. Div. 268).

Notice to treat need not be given to the owners of easements, compensation in respect of such easements being given under s. 68 of the Lands Clauses Consolidation Act, 1845, as for land " injuriously affected " (*Clark* v. *School Board for London* (1874), L. R. 9 Ch. App. 120 ; *Macey* v. *Metropolitan Board of*

Works (1864), 33 L. J. Ch. 377 ; *Bedford* (*Duke of*) v. *Dawson* (1875), L. R. 20 Eq. 353). With respect to compensation under s. 68, see pp. 95 to 104.

Owners of land cannot, however, be required under s. 18 to grant easements only. Notice to treat must be served for the whole land unless express power is given to acquire the easement only (*Pinchin* v. *London and Blackwall Railway Co.* (1854), 5 De G. M. & G. 851, at p. 861 ; *Ramsden* v. *Manchester South Junction and Altrincham Railway Co.* (1848), 1 Ex. 723 ; *Falkner* v. *Somerset and Dorset Railway Co.* (1873), L. R. 16, Eq. 458).

Notice of claim.—A party upon whom a notice to treat has been served should deliver to the responsible authority a notice of claim, stating the exact nature of the interest in respect of which compensation is claimed and giving details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (2)).

The delivery of a notice of claim is not obligatory ; but failure to deliver the same, at all or within sufficient time to enable the responsible authority to make a proper offer, will render the defaulting party liable to pay the costs of an arbitration (see p. 80).

Withdrawal of notice to treat.—Where a notice of claim has been delivered the responsible authority may, within six weeks after the delivery, withdraw any notice to treat served on the claimant or on any other person interested in the land authorised to be acquired. The responsible authority will, however, be liable to pay compensation to such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn. The amount of such compensation, in default of agreement, is to be determined by an official arbitrator (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (2)).

Apart from this statutory power the responsible authority will not ordinarily be entitled to withdraw a notice to treat.

Questions of disputed compensation to be settled by arbitration.—If for twenty-one days after the service of the notice to treat a party fails to state the particulars of his claim or to treat with the responsible authority, or if such party and the responsible authority do not agree as to the amount of the compensation to be paid, the amount of such compensation is to be settled by arbitration (Lands Clauses Consolidation Act, 1845, s. 21 ; Housing, Town Planning, etc. Act, 1909, Sched. I. (4) ; Acquisition of Land (Assessment of Compensation) Act, 1919, s. 1). This is subject to the right of the responsible authority to withdraw the notice to treat (*supra*) or, of course, to a subsequent agreement between the parties as to the amount of compensation.

A special mode of procedure is provided in cases where lands required to be purchased belong to persons who, by reason of absence from the United Kingdom, are prevented from treating or who cannot, after diligent inquiry, be found. See ss. 58 to 62 of the Lands Clauses Consolidation Act, 1845, as to the mode of determining the compensation in such cases ; ss. 76 to 78 as to the payment of such compensation into the Bank of England ; and ss. 64 to 67 as to subsequent arbitration with respect to the sufficiency of such compensation at the request of the owners of the lands.

The arbitrator.—Section 1 of the Acquisition of Land (Assessment of Compensation) Act, 1919, provides that the arbitrator is to be one of the panel of official arbitrators appointed under that section as may be selected in accordance with the rules made by the Reference Committee. Rules for this purpose will be found contained in the Acquisition of Land (Assessment of Compensation) Rules, 1919. Rule 3 relates to the application to the Reference Committee for the selection of an official arbitrator ; and rule 4 to the selection of an arbitrator by the committee. The Reference Committee may, in the case of the death or the incapacity of the arbitrator originally selected, or if it is shown to the committee that it is expedient so to do, in any other case, at any time before the arbitrator has made his award, revoke the reference of the question of disputed compensation to the selected arbitrator

and select another arbitrator for the purpose of determining the question (rule 6).

The arbitrator selected is, as soon as may be, to proceed with the determination of the question in dispute and to arrange with the responsible authority and the claimant the time and place of the hearing (rule 5 (1)).

Jurisdiction of arbitrator.—The jurisdiction of the arbitrator is limited to settling the amount of the purchase-money or compensation. He cannot inquire into questions of title; such questions must be decided in an action on the award (*Brierley Hill Local Board* v. *Pearsall* (1884), 9 App. Cas. 595).

Accordingly, proceedings to assess compensation will not be restrained by injunction on the ground that the claimant is not entitled to any compensation (*London and Blackwall Railway Co.* v. *Cross* (1886), 31 Ch. Div. 354; *East and West India Docks Co.* v. *Gattke* (1851), 3 M. & G. 155).

Consolidation of proceedings.—Where notices to treat have been served for the acquisition of the several interests in the land to be acquired, the claims of the persons entitled to such interests shall, so far as practicable, and so far as not agreed and if the responsible authority so desire, be heard and determined by the same official arbitrator, but the value of the several interests in the land having a market value are to be separately assessed (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 4). See rule 7 of the Acquisition of Land (Assessment of Compensation) Rules, 1919, which contains provisions for the consolidation of claims relating to several interests in the same land.

Procedure before official arbitrator.—The official arbitrator must hear, by themselves or their agents, any authorities or parties authorised to appear; but shall not, except in such cases as the Minister of Health otherwise directs, hear counsel (Housing, Town Planning, etc. Act, 1909, Sched. I. (8)).

The official arbitrator must also hear witnesses (*ibid.*); but, as respects expert witnesses, not more than one on either side is to be heard, unless the official arbitrator otherwise directs (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (1)), except that where the claim includes a claim for com-

pensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals, or, as the case may be, on the damage suffered by reason of the disturbance may be allowed (*ibid.*).

The proceedings before the official arbitrator are to be heard by him sitting in public (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (5)). He is entitled to enter on and inspect any land which is the subject of the proceedings before him (*ibid.* s. 3 (4)). The responsible authority and the claimant must furnish to the arbitrator on his request any document or other information which it is in their or his power to furnish and which the arbitrator may require for the purpose of considering and determining the case (Acquisition of Land (Assessment of Compensation) Rules, 1919, rule 5 (2)).

As to the fees to be charged in respect of proceedings before official arbitrators, see the Acquisition of Land (Assessment of Compensation) Fees Rules, 1920, and the Acquisition of Land (Assessment of Compensation) Fees (No. 2) Rules, 1920.

Assessment of value by Commissioners of Inland Revenue.—Either party to a claim for compensation may require the Commissioners of Inland Revenue to assess the value of the land in respect of which the claim arises (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 8 (4)). A copy of the assessment is to be sent forthwith by the Commissioners to the other party. A certified copy of the assessment is admissible in evidence of the value of the land in proceedings before the official arbitrator, and the officer who made the assessment must attend, if the official arbitrator so require, to answer such questions as the official arbitrator may think fit to put to him thereon (*ibid.*).

Measure of compensation.—With respect to the measure of compensation and the statutory rules for assessing the same, see pp. 87 to 95.

The award.—The official arbitrator must, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award (Acquisition of Land

(Assessment of Compensation) Act, 1919, s. 3 (3)). His decision upon any question of fact is final and binding on the parties and persons claiming under them (*ibid.* s. 6 (1)).

Special case.—The official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 6 (1)). The decision of the High Court upon the case is to be final and not subject to appeal (*ibid.* s. 6 (2)).

Enforcement of award.—Either party may enforce the award of the arbitrator by an action of specific performance (*Regent's Canal Co.* v. *Ware* (1857), 23 Beav. 575). It will be an answer to an action by the owner for the amount of the compensation under the award that he has not executed a conveyance (*East London Union* v. *Metropolitan Railway Co.* (1869), L. R. 4 Ex. 309). A decree of specific performance will only be granted at the instance of a claimant, subject to his title being proved (*Gunston* v. *East Gloucestershire Railway Co.* (1868), 18 L. T. 8).

The responsible authority have also a statutory means of completing the purchase of the land if the owner on tender of the purchase-money or compensation refuses to accept the same, or neglects or fails to make out a title to the satisfaction of the responsible authority, or if he refuses to convey or release the lands as directed by the responsible authority. As to the procedure to be adopted, see ss. 76, 77, and 78 of the Lands Clauses Consolidation Act, 1845. This procedure, of course, confers no right as against third parties and is not applicable to cases where the person purporting to sell has no title at all to the land (*Wells* v. *Chelmsford Local Board of Health* (1880), 15 Ch. Div. 108).

Costs of arbitration.—Where the responsible authority has made an unconditional offer in writing of a sum as compensation to a claimant and the sum awarded by the official arbitrator to the claimant does not exceed the sum offered, the official arbitrator must, unless for special reasons he thinks proper not

to do so, order the claimant to bear his own costs and pay the costs of the responsible authority so far as such costs were incurred after the offer was made (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (1)). "Costs" includes any fees, charges, and expenses of the arbitration or award (*ibid.* s. 5 (8)).

If the official arbitrator is satisfied that a claimant has failed to deliver to the responsible authority a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the responsible authority to make a proper offer, the above provisions will apply as if an unconditional offer had been made by the responsible authority at the time when in the opinion of the official arbitrator sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer (*ibid.* s. 5 (2)). As to what a notice of claim should state, see p. 75.

Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has delivered a proper claim in sufficient time, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the responsible authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made (*ibid.* s. 5 (3)).

Subject to the foregoing provisions, the costs of the arbitration are in the discretion of the official arbitrator who may direct to and by whom and in what manner the costs are to be paid. The official arbitrator may in any case disallow the cost of counsel (*ibid.* s. 5 (4)). He may disallow the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily (Housing, Town Planning, etc. Act, 1909, Sched. I. (9)).

An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (5)).

Where an official arbitrator orders the claimant to pay the costs, or any part of the costs, of the responsible authority, that authority may deduct the amount so payable by the claimant from the amount of the compensation payable to him (*ibid.* s. 5 (6)).

Without prejudice to any other method of recovery, the amount of costs ordered to be paid by a claimant, or such part as is not covered by such deduction, may be recovered by the responsible authority summarily as a civil debt (*ibid.* s. 5 (7)).

Under Sched. I. provision (9) to the Housing, Town Planning, etc. Act, 1909 (see p. 164), power was given to the Local Government Board (now the Minister of Health) with the concurrence of the Lord Chancellor to make rules fixing a scale of costs.

Application of compensation.—With respect to the application of compensation in respect of lands taken from parties under disability, but authorised to sell under the provisions of the Lands Clauses Consolidation Act, 1845, see ss. 69, 71, and 72 of that Act. These sections, which apply to the application of purchase-money as well as to compensation, are referred to at p. 62.

In the case of glebe land or other land belonging to an ecclesiastical benefice sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, are to be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice (Housing, Town Planning, etc. Act, 1909, Sched. I. (12)).

Leases.—If lands are comprised in a lease for a term of years unexpired, part only of which lands are required for the purposes of the town planning scheme, the rent payable in respect of the lands is to be apportioned between the lands required and the residue of the lands (Lands Clauses Consolidation Act, 1845, s. 119). The apportionment may be settled by agreement between the lessor, the lessee, and the responsible

authority (*ibid.*); otherwise it is to be settled by an official arbitrator (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 1). The lessee is entitled to receive compensation for the damage done to him in his tenancy by reason of the severance of the lands, or otherwise by reason of the works authorised to be executed (Lands Clauses Consolidation Act, 1845, s. 120).

If any lands are in the possession of a person having no greater interest therein than as tenant for a year or from year to year, and if such person is required to give up possession before the expiration of his term or interest, he is entitled to compensation for the value of his unexpired term or interest, and for any just allowance which ought to be made to him by an incoming tenant and for any loss or injury he may sustain, or, if a part only of the lands be required, compensation for the damage done to him by severing the lands or otherwise injuriously affecting the same (*ibid.* s. 121).

Intersected lands, copyholds, common lands, mortgaged lands, and rent-charges.—Sections 93 and 94 of the Lands Clauses Consolidation Act, 1845, relate to intersected lands; ss. 95 to 98 to copyholds; ss. 99 to 107 to compensation in respect of common lands; ss. 108 to 114 to the redemption of mortgages; and ss. 115 to 118 to the release of lands from rent and other charges.

Mines.—Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845 (subject to the necessary adaptations), are incorporated with the order for the compulsory purchase of lands. These sections relate to mines of coal, ironstone, slate, or other minerals under and near the lands purchased.

Disposal of superfluous land.—Section 127 of the Lands Clauses Consolidation Act, 1845, which requires superfluous lands to be sold, is expressly excepted by the order (see p. 66) from applying to the compulsory purchase of lands for a town planning scheme. But s. 175 of the Public Health Act, 1875, will apply (see p. 57). As to the provisions of such section, see p. 63. Further, a town planning scheme itself may contain provisions as to the disposal of superfluous land (see p. 64).

Temporary user of land.—As to the temporary user for lands pending their use for the purposes of the scheme, see p. 64.

Liability to make good deficiency in the land tax and poor rate.—The responsible authority are liable, until the works they are authorised to carry out are completed and assessed to the land tax and poor rate, to make good the deficiency in the several assessments for land tax and poor rate by reason of the lands having been taken or used for the purposes of the works ; and the deficiency is to be computed according to the rental at which the lands, with any buildings thereon, were valued or rated at the time of the confirmation of the order for the purchase of the lands (Lands Clauses Consolidation Act, 1845, s. 133 ; Housing, Town Planning, etc. Act, 1909, Sched. I. (2), (11) ; *St. Leonard, Shoreditch* v. *London County Council*, [1895] 2 Q. B. 104 ; 59 J. P. 423).

The poor rate is an indivisible rate (*City of London Corporation* v. *Associated Newspapers, Limited*, [1915] A. C. 674), and accordingly under s. 133 of the Lands Clauses Consolidation Act, 1845, the responsible authority will be liable to make good the deficiency in the county rate and in a borough rate which is charged on the poor rate (*Farmer* v. *London and North Western Railway Co.* (1888), 20 Q. B. D. 788). But such liability will in London only extend to that part of the general rate which represents the poor rate, the old general rate being merely levied with the poor rate under the combined name of the general rate (*Islington Borough Council* v. *London School Board*, [1903] 2 K. B. 354).

There is a liability under s. 133 to make good the deficiency in rates in respect of property which, though of a rateable character, was not at the time of the confirmation of the compulsory order by the Minister of Health in fact rated because the same was unoccupied (*Overseers of Putney* v. *London and South Western Railway Co.*, [1891] 1 Q. B. 440). The liability extends to land, which, when the authorised works are completed, will not be liable to assessment, as, for example, land to be dedicated as a highway, and for this purpose s. 133 must be construed as meaning " until the works are completed, and such parts of them as become assessable property are

assessed " (*Governor, etc., of Poor of City of Bristol* v. *Mayor, etc., of Bristol* (1887), 18 Q. B. D. 549, at p. 561 ; *Stratton* v. *Metropolitan Board of Works* (1874), L. R. 10 C. P. 76).

The liability to make good the deficiency continues " until the works shall be completed and assessed." Where several undertakings are authorised the liability will determine as regards each undertaking when it is completed and assessed (*Governor, etc., of Poor of City of Bristol* v. *Mayor, etc., of Bristol, supra*).

Instead of making good the deficiency in the land tax the responsible authority is empowered by s. 133 to redeem the same at any time in accordance with the Acts providing for the redemption of the land tax.

Lord Halsbury's Laws of England, vol. 6, pp. 16–18, may be consulted for the purposes of a further inquiry into the scope of s. 133 of the Lands Clauses Consolidation Act, 1845.

A question arises whether s. 34 of the Housing, Town Planning, etc. Act, 1909—which provides that " s. 133 of the Lands Clauses Consolidation Act, 1845, shall not apply in the case of any lands of which a local authority becomes possessed by virtue of the Housing Acts "—applies to lands acquired for the purposes of a town planning scheme under Part II. of the Housing, Town Planning, etc. Act, 1909. Section 34 will not so apply if the term " Housing Acts " does not include Part II. of the Act of 1909. It is submitted, for the reasons about to be given, that the term " Housing Acts " does not comprise Part II. of the Act of 1909, and that therefore s. 34 does not apply in the case of a town planning scheme so as to exempt the responsible authority from liability under s. 133 of the Lands Clauses Consolidation Act, 1845.

Section 34 is one among a number of provisions in the Housing, Town Planning, etc. Act, 1909, in which the expression " Housing Acts " appears. The expression is found in s. 3 relating to loans made by the Public Works Loan Commissioners for purposes of the Housing Acts ; in s. 5, which requires purchase-money or compensation payable in pursuance of the Housing Acts by a local authority in respect of the lands of another local authority to be paid and applied as the Minister

of Health may determine; in s. 8, which authorises the acceptance of donations of land and money for the purposes of the Housing Acts; in s. 36, which confers a power of entry into houses and other premises for purposes connected with the Housing Acts; in s. 38, providing for joint action by local authorities for purposes of the Housing Acts; in s. 40, relating to the sale of lands and dwellings acquired or constructed for any purposes of the Housing Acts; in s. 41, which relates to notices, advertisements, and other documents in connection with the Housing Acts; in s. 42, which makes provision in relation to the publication in the *London Gazette* of schemes or orders under the Housing Acts; and in s. 45, which enacts that nothing in the Housing Acts is to authorise the acquisition of lands of the kind therein mentioned.

The above provisions, which refer to the Housing Acts, would—having regard to the definition of the expression "Housing Acts" in s. 51 of the Housing, Town Planning, etc., Act, 1909—on the face of them apply to Part II. of that Act relating to town planning. Section 51, which is comprised in Part I. of the Act, provides that: "In this part of this Act the expression 'Housing Acts' means the principal Act (the Housing of the Working Classes Act, 1890) and any Act amending that Act, including this Act." However, a reference to the expression "Housing Acts" in other parts of the Act of 1909 would appear to show that this provision in s. 51 is not to be literally applied, and that the concluding words "this Act" should be construed to mean "this part of this Act." Thus s. 53, which is included in Part I., contains provisions which are to have effect in the application of the "Housing Acts" to Scotland. If the expression "Housing Acts" includes Part II. of the Act of 1909, such provisions will, of course, apply to Part II. But s. 67, which is contained in Part II., in applying that part to Scotland, sets forth a number of modifications. It would have been quite unnecessary to state several of such modifications—such as those which relate to the substitution of the Local Government Board for Scotland for the English Local Government Board, the powers of local inquiry of the Board, and the "local authority" for the

purposes of Part II.—if the provisions contained in s. 53 were also applicable. Moreover, sub-ss. (1) and (3) of s. 67 contrast Part II. of the Act with the "Housing Acts as defined in Part I. of the Act." Again, ss. 73 and 74 of the Act—comprised in Part IV.—both contain the words "Housing Acts or Part II. of this Act," which clearly indicate that Part II. does not fall within the "Housing Acts." It will be observed that s. 51 defines the expression "Housing Acts" as used "in this part of this Act," that is, Part I. No definition of the expression is given for the purposes of construing ss. 73 and 74 in Part IV. It would seem, indeed, that instead of s. 51 being construed as literally meaning what it says—namely, that "*in this part of this Act* the expression 'Housing Acts' means the principal Act and any Act amending that Act, including *this Act*"—s. 51 should be construed to mean that "*in this Act* the expression 'Housing Acts' means the principal Act and any Act amending that Act, including *this part of this Act*." It is worthy of note that the expression "Housing Acts" as used in the Housing, Town Planning, etc. Act, 1919, does not include Part II. of the Act of 1909 or the provisions of the Act of 1919, which relate to town planning (see s. 52 (2) of the Act of 1919). *Cf.* also the meaning of "Housing Acts" in the Housing, etc. Act, 1923—see s. 25 (2).

Having regard to the above considerations—as well as to the facts that the provisions in question are contained in Part I. of the Act entitled "Housing of the Working Classes" (a title which relates to matters substantially different from town planning), that such provisions are not directly applied to Part II. as might have been expected if their application was so intended, that they overlap the substantive enactments relating to town planning (*cf.* s. 8 and Sched. IV. (14); s. 36 and Sched. IV. (11); s. 38 and s. 55 (3)), and that certain of the provisions are expressly applied to town planning (namely, ss. 5 and 45 by s. 60), and to other minor considerations which present themselves upon a careful perusal of the Act—it is submitted that the expression "Housing Acts" in the Act of 1909 does not comprise Part II. of the Act relating to town planning.

(*c*) *Measure of Compensation in respect of Lands acquired.*

In estimating compensation regard is to be had, not only to the value of the land to be taken, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severance of the lands taken from the other lands of the owner or otherwise injuriously affecting such other lands by the exercise of the statutory powers (Lands Clauses Consolidation Act, 1845, s. 63).

Interest in lands to be valued as at time of notice to treat.—The time of the service of the notice to treat fixes the date at which the condition and value of the premises are to be estimated as well as the interests of the parties (*Penny* v. *Penny* (1867), L. R. 5 Eq. 227; *Bwllfa and Merthyr Dare Steam Collieries* (1891), *Ltd.* v. *Pontypridd Waterworks Co.*, [1902] 2 K. B. 135; [1903] A. C. 426; *Mercer* v. *Liverpool, St. Helen's and South Lancashire Railway*, [1903] 1 K. B. 652; [1904] A. C. 461; *Dawson* v. *Great Northern and City Railway*, [1905] 1 K. B. 260).

Under s. 21 (1) (*b*) of the Housing of the Working Classes Act, 1890, in estimating the value of land taken compulsorily for the purpose of an improvement scheme under Part I. of that Act, any addition to or improvement of the property made after the publication of an advertisement stating the fact of the improvement scheme having been made is not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) to be included; nor, in the case of any interest acquired after such date, may any separate estimate of the value thereof be made so as to increase the amount of the compensation to be paid for the lands. There does not seem to be any similar provision with respect to the assessment of compensation as to lands compulsorily taken for the purposes of town planning.

Such a provision is to be found in s. 58 (2) of the Housing, Town Planning, etc. Act, 1909, in relation to compensation in respect of property injuriously affected by the making of a scheme (see p. 156).

As to the valuation of land taken by the responsible authority which has already been the subject of compensation under

s. 58 of the Housing, Town Planning, etc. Act, 1909, see pp. 110, 111.

Statutory rules for assessment of compensation.—The Acquisition of Land (Assessment of Compensation) Act, 1919, lays down important rules as to the assessment of compensation by an official arbitrator. These rules are to be found in s. 2, which also provides that the official arbitrator is entitled to be furnished with such returns and assessments as he may require.

The rules are as follows: (1) No allowance is to be made on account of the acquisition being compulsory: (2) the value of land is, subject as hereinafter provided, to be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise: provided that the arbitrator is entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant: (3) the special suitability or adaptability of the land for any purpose is not to be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority; provided that any *bonâ fide* offer for the purchase of the land made before the passing of the Acquisition of Land (Assessment of Compensation) Act, 1919, namely, the 19th August, 1919, which may be brought to the notice of the arbitrator is to be taken into consideration: (4) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase is not to be taken into account: (5) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bonâ fide* intended, be assessed on the basis of the reasonable cost of equivalent

reinstatement: (6) the provisions of rule 2 are not to affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

Notes upon these rules will be found in the pages following.

No allowance to be made on account of compulsory purchase.—This is the first of the rules laid down in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, with respect to the assessment of compensation. It appears that, in assessing the value of land taken, it has been a usual practice to add a certain percentage in respect of compulsory purchase. There is no provision of the sort in the Lands Clauses Acts. Section 21 of the Housing of the Working Classes Act, 1890, expressly forbade such an allowance in the case of land taken for an improvement scheme.

General mode of assessment.—The general rule for assessing the value of land, as laid down in rule 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, is that the value "shall be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise."

Accordingly account may be taken, not only of the present purpose to which the land is applied, but also of any more beneficial purpose to which it might be applied within a reasonable time. Thus the potential value of agricultural land for building purposes may be considered (*Reg.* v. *Brown* (1867), L. R. 2 Q. B. 630). See also *Ripley* v. *Great Northern Railway Co.* (1875), 10 Ch. App. 435; *Brown* v. *Commissioners for Railways* (1890), 15 A. C. 240. This principle applies where the claimants have taken the land for a particular purpose, but have not yet in fact so applied it (*Bailey* v. *Isle of Thanet Light Railways*, [1900] 1 Q. B. 722; *Thames Conservators* v. *London, Tilbury and Southend Railway Co.* (1892), 68 L. T. 21). On the other hand, the purpose to which the responsible authority may apply the land taken is not a material factor in assessing the amount of compensation (*Stebbing* v. *Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; *Re Gough and Aspatria, Silloth and District Joint Board*, [1904] 1 K. B. 417). If the land taken is subject to restrictions as to its use, its market value must be

determined accordingly (*Stebbing* v. *Metropolitan Board of Works, supra ; Corrie* v. *MacDermott,* [1914] A. C. 1056).

Rule 4 (see p. 88) prohibits any allowance in the assessment for any increase in value of the land by reason of a use thereof, or of any premises thereon, which could be restrained by the Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health.

The general rule, as above stated, for assessing the value of land is not to affect the assessment of compensation for disturbance or any other matter not directly based on the value of land (see rule 6 of the rules in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, p. 89).

Where the owner of land is expelled therefrom he is entitled to compensation for the loss occasioned thereby. In *Ricket* v. *Metropolitan Railway Co.* (1865), 34 L. J. Q. B. 257, at p. 261, ERLE, C.J., said : " The company, claiming to take land by compulsory process, expel the owner from his property, and are bound to compensate him for all the loss caused by the expulsion ; and the principle of compensation, then, is the same as in trespass for expulsion ; and so it has been decided in *Jubb* v. *Hull Dock Co.* (1846), 9 Q. B. 443. There a brewery had been taken by the defendants, and the plaintiff claimed to be compensated for the loss of his business as a brewer ; and the Court held that he was so entitled, expressly on the ground that the premises had been taken ; and distinguished that case from *Rex* v. *London Dock Co.* (1836), 5 A. & E. 163, where compensation for loss of custom to a public-house was held to have been properly refused, upon the ground that in the latter case no part of the premises of the claimant had been taken or touched by the company." And see *Reg.* v. *Commissioners of Rochdale Improvement Act* (1856), 2 Jur. (N.S.) 861 ; *Morgan* v. *Metropolitan Railway Co.* (1868), L. R. 4 C. P. 97 ; and *Gibson* v. *Hammersmith Railway Co.* (1863), 32 L. J. Ch. 337.

Similarly, loss of profits and goodwill are matters for consideration in assessing compensation (*White* v. *Commissioners of Public Works* (1870), 22 L. T. 591 ; *Cooper* v. *Metropolitan Board of Works* (1883), 25 Ch. Div. 472 ; *Bidder* v. *North*

Staffordshire Railway Co. (1878), 4 Q. B. D. 412 ; *Reg.* v. *Scard* (1894), 10 T. L. R. 545).

In assessing compensation in respect of the lessor's reversion in licensed premises regard is to be had to the enhancement in value of the premises, by reason of the licence (*Belton* v. *London County Council* (1893), 68 L. T. 411), and to a covenant by the tenant to sell the lessors' beer only (*Bourne* v. *Mayor of Liverpool* (1863), 33 L. J. Q. B. 15 ; *Re Chandler's Wiltshire Brewery Co. and London County Council*, [1903] 1 K. B. 569).

Special suitability or adaptability of land.—Rule 3 of the rules in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (see p. 88), while recognising that the special suitability or adaptability of land for any purpose may generally be properly taken into account, specifically excludes the application of this principle if the purpose " is a purpose to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department or any local or public authority."

That adaptability for a particular purpose may in general be taken into account was recognised in many cases (see *Re Riddell and Newcastle and Gateshead Water Co.* (1879), Browne and Allan's Law of Compensation, 2nd edit. p. 672 ; *Re Ossalinsky* (*Countess*) *and Manchester Corporation* (1883), *ibid.* p. 659 ; *Re Gough and Aspatria, Silloth and District Joint Water Board*, [1904] 1 K. B. 417 ; *Trent-Stoughton* v. *Barbados Water Supply Co.*, [1893] A. C. 502 ; *Blantyre* (*Lord*) v. *Babtie* (1888), 13 App. Cas. 631 ; *Sidney* v. *North Eastern Railway Co.*, [1914] 3 K. B. 629 ; *Fraser* v. *Fraserville* (*City of*), [1917] A. C. 187).

In *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16, it was held that, where land was compulsorily taken for the purpose of making a reservoir, and the land had a special adaptability for the construction of a reservoir, the tribunal assessing the compensation was not precluded from taking into consideration the special adaptabilty as an element of value by reason of the fact that the land could not be utilised for the

construction of a reservoir by other parties unless statutory powers for its compulsory purchase were first obtained. The principle of this decision, which was approved in *Cedars Rapids Manufacturing Company* v. *Lacoste*, [1914] A. C. 569, will not now be applicable in the case of land required by a local or public authority.

The proviso to rule 3 (see p. 88) is of general application, and is not limited to such cases of special suitability or adaptability of the land for any purpose as come within the rule. Nor need the offer have been made in open market. It will suffice if it was made by the local authority who are compulsorily acquiring the land (*Percival* v. *Peterborough Corporation*, [1921] 1 K. B. 414).

Reinstatement.—Under rule 5 (see p. 88), where the land is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may be assessed on the basis of the reasonable cost of reinstatement. The "reasonable cost of reinstatement" appears to mean the cost of acquiring an equally convenient site and erecting equally convenient premises where the same can be obtained and done on reasonable terms (see *London School Board* v. *South Eastern Railway Co.* (1887), 3 T. L. R. 710; *Metropolitan and District Railway Cos.* v. *Burrow* (1884), Hudson on Compensation, p. 1521; *Edinburgh Corporation* v. *North British Railway Co.* (1892), Browne and Allan's Law of Compensation, 2nd edit. p. 656).

Compensation in respect of severance and of injurious affection of neighbouring lands belonging to owner of land taken.—Under s. 63 of the Lands Clauses Consolidation Act, 1845, regard is to be had, in assessing compensation, to the "damage, if any, to be sustained by the owner of the lands by reason of the severance of the lands taken from the other lands of such owner or otherwise injuriously affecting such other lands by the exercise of the powers" conferred. The other lands of the owner of land taken may be injured by mere severance, or by the construction, existence, and carrying on of the authorised undertaking.

For severance to be occasioned it is not necessary that the

land taken should be in actual contiguity with the other lands of the owner. "Where several pieces of land owned by the same person are so near to each other, and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act; so that, if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation" (Lord WATSON in *Cowper Essex* v. *Acton Local Board* (1889), 14 App. Cas. 153, at p. 167).

But the lands taken must be so connected with or related to the lands left that the owner of the latter is prejudiced in his ability to use or dispose of them to advantage by reason of the severance (Lord SUMNER in *Holditch* v. *Canadian Northern Ontario Railway*, [1916] 1 A. C. 536, at p. 542). His Lordship said: "The bare fact that before the exercise of the compulsory power to take land he was the common owner of both parcels is insufficient, for in such a case taking some of his land does no more harm to the rest than would have been done if the land taken had belonged to his neighbour. Compensation for severance therefore turns ultimately on the circumstances of the case. The appellant contended that the present case was governed by the decision in *Cowper Essex* v. *Acton Local Board* (1889), 14 App. Cas. 153, and it was so held in the minority judgments in the Supreme Court of Canada. Their Lordships were unable to agree in this view. In that case the building owner retained such control over the development and use alike of the parcel sold and of the parcels unsold as made a real and prejudicial difference between his ability to deal with what remained to him after the compulsory taking of land and his ability to deal as a whole with both it and the land taken before such compulsory taking. In the present case the appellant's relation to the property had been definitely fixed before any notice to take land was served at all. He had parcelled out the entirety of his estate and stereotyped the scheme, parted with numerous plots in all parts of it without retaining any hold over the use to be made of them, and converted what had been one large holding into a large number of small and separate

holdings with no common connection except that he owned them all. There was one owner of many holdings, but there was not one holding, nor did his unity of ownership 'conduce to the advantage or protection' of them all as one holding."

The land taken need not be held by the same title as the other lands to constitute severance (*Holt* v. *Gas Light and Coke Co.* (1872), L. R. 7 Q. B. 728).

In assessing compensation for severance the prospective value of the severed lands may be taken into consideration (*Reg.* v. *Brown* (1867), L. R. 2 Q. B. 630; *Ripley* v. *Great Northern Railway Co.* (1875), L. R. 10 Ch. App. 435).

The ordinary rule is that compensation is not recoverable in respect of the injurious affecting of neighbouring lands by reason of the user as distinguished from the construction of the authorised works on the land taken (*Hammersmith Railway Co.* v. *Brand* (1869), L. R. 4 H. L. 171, and see p. 102). But this does not apply where the neighbouring lands belong to the owner of the land taken (*Cowper Essex* v. *Acton Local Board* (1889), 14 A. C. 153). In the latter case Lord HALSBURY, L.C., at pp. 161, 162, said: "I take it that two propositions have now been conclusively established. One is that land taken under the powers of the Lands Clauses Act and applied to any use authorised by the statute cannot, by its mere use, as distinguished from the construction of works upon it, give rise to a claim for compensation. But a second proposition is, it appears to me, not less conclusively established, and that is, that, where part of a proprietor's land is taken from him and the future use of the part so taken may damage the remainder of the proprietor's land, then such damage may be an injurious affecting of the proprietor's lands, though it would not be an injurious affecting of the land of neighbouring proprietors from whom nothing had been taken for the purpose of the intended works. It may seem at first sight a little strange that what is injurious affecting in one case should not be in the other. But it is possible to explain that apparent contradiction by the consideration that the injurious affecting by the use, as distinguished from the construction, is a particular injury suffered by the proprietor from whom some portion of

his land is taken different in kind from that which is suffered by the rest of Her Majesty's subjects."

Thus, where land was taken for the purposes of a railway and on adjoining land belonging to the same owner there stood a cotton-mill, the owner was entitled to compensation by reason of the fact that there was a depreciation in the value of the mill due to the danger of fire from the sparks of the engines using the railway (*Re Stockport, Timperley and Altringham Railway Co.* (1864), 33 L. J. Q. B. 251). In the case of *Cowper Essex* v. *Acton Local Board, supra*, it was held that, where land was taken for sewage works, compensation should be allowed in respect of the depreciation in value for building purposes of other lands belonging to the same owner arising from the existence and use of the sewage works. See also *Buccleuch* (*Duke*) v. *Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; *Reg.* v. *Pearce, Ex parte London School Board* (1898), 78 L. T. 681; *Blundell* v. *Rex*, [1905] 1 K. B. 516.

It appears, however, that the principle only applies where the injurious affection arises from the user of the statutory works on the land actually taken from the claimant and not from the user on other parts of the land acquired for the undertaking (*Horton* v. *Colwyn Bay and Colwyn Urban Council*, [1908] 1 K. B. 327; *Caledonian Railway Co.* v. *Ogilvy* (1856), 2 Macq. 229; *City of Glasgow Union Railway Co.* v. *Hunter* (1870), L. R. 2 Sc. & Div. 78; *Cowper Essex* v. *Acton Local Board, supra*).

(*d*) *Compensation in respect of Lands injuriously affected by Authorised Works.*

Under s. 68 of the Lands Clauses Consolidation Act, 1845, compensation is recoverable "in respect of any lands or of any interest therein, which shall have been injuriously affected by the execution of the works." It would seem that this provision is applicable to works constructed in accordance with a town planning scheme upon lands acquired for the purposes of the scheme (see *Reg.* v. *St. Luke's* (1871), L. R. 6 Q. B. 572; L. R. 7 Q. B. 148). Section 68 of the Act of 1845 refers to claims exceeding £50; s. 22 to claims not exceeding £50.

There must be damage to the land itself.—To found a claim for compensation there must be damage to the land itself. The landowner is not entitled to compensation for damage merely to his trade or business, or for damage resulting in personal inconvenience.

Thus, where a public-house was situated by the side of a public footway and a company, in carrying out its statutory powers to make a railway, temporarily obstructed certain streets leading to the footway so as to make the access to the public-house inconvenient, thereby causing the occupier of the public-house to sustain damage in respect of the interruption to his business, it was held that he was not entitled to compensation under s. 68 of the Lands Clauses Consolidation Act, 1845 (*Ricket* v. *Metropolitan Railway Co.* (1867), L. R. 2 H. L. 175). Lord CRANWORTH in this case (at p. 198) observed: "Both principle and authority seem to me to show that no case comes within the purview of the statute, unless where some damage has been occasioned to the land itself, in respect of which but for the statute the complaining party might have maintained an action. The injury must be actual injury to the land itself, as by loosening the foundations of buildings upon it, obstructing its light, or its drains, making it inaccessible by lowering or raising the ground immediately in front of it, or by some physical deterioration. Any other construction of the clause would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." In *Caledonian Railway Co.* v. *Walker's Trustees* (1882), 7 A. C. 259, at pp. 276, 280, Lord SELBORNE, L.C., said that the case of *Ricket* v. *Metropolitan Railway Co.* established that "loss of trade or custom, by reason of a work not otherwise directly affecting the house or land in or upon which a trade had been carried on, or any right properly incident thereto, was not by itself a proper subject for compensation." So, in *Bigg* v. *London Corporation* (1873), L. R. 15 Eq. 376, where the lowering of a roadway interfered with the cellars of a silversmith, it was held that he was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by the authorised act of lowering the

roadway, but only for direct structural injury occasioned by the unauthorised interference with his cellar. And thus, where a claimant for compensation was the tenant of premises adjoining lands acquired under an improvement scheme for the housing of the working classes and under s. 22 of the Housing of the Working Classes Act, 1890, an easement of light and air appurtenant to the claimant's premises and existing over such adjoining land was extinguished, the arbitrator rightly rejected evidence as to the profits of the claimant's business which had been tendered to establish that a loss of trade and diminution in value of the goodwill had been occasioned by the extinction of the easement (*Harvey and London County Council, In re*, [1909] 1 Ch. 528).

Personal inconvenience unaccompanied by injury to property is not a ground for damages. Thus, where a railway passed within a few yards of the lodge of an estate across a public road forming the chief access thereto, the annoyances thereby occasioned—constant stoppages by the closing of the gates on the level crossing, the frightening of horses from the passing of trains, and the terrifying of visitors—were held not to be a ground for a claim for damages (*Caledonian Railway Co.* v. *Ogilvy* (1856), 2 Macq. 229).

The general test as to the right to compensation.—In the case of *Metropolitan Board of Works* v. *McCarthy* (1874), L. R. 7 H. L. 243, Lord Cairns, L.C., at p. 253, said he would not be disposed to find fault with any part of the definition of the right to compensation relied upon by counsel when he stated "that the test which he would submit as one which he thought would explain and reconcile the various cases upon this subject was this, that where by the construction of works there is a physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of in connection with such property, and which right gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it, there is a title to compensation if, by reason of such interference, the property, as a property, is lessened in value." In this case the plaintiff carried on business, as a carman and

contractor for supplying builders with lime, bricks, and other building materials and as a dealer in sand and ballast, near a draw-dock which opened into the Thames. He had no right in any way to the use of the dock, except as one of the public ; but, his premises being in close proximity to it, his use of it for the purposes of his business was very constant. The dock was entirely destroyed by the works of the Thames Embankment. The special case submitted to the Court stated that " by reason of the destruction of the dock and the destruction thereby of the access to and from the Thames, the plaintiff's premises became and were, as premises either to sell or occupy in their then condition, and with reference to the uses to which any owner or occupier might put them in their then state and condition, permanently damaged and diminished in value." The plaintiff was held to be entitled to compensation. So, a man possessed of a house fronting on a public highway was likewise entitled where a railway company, under the powers conferred on them by their special Act, erected an embankment on a portion of the highway opposite to the house, thereby narrowing the road from fifty to thirty-three feet and thus materially diminishing the value of the house for selling or letting and obstructing the access of light and air to it (*Beckett* v. *Midland Railway Co.* (1867), L. R. 3 C. P. 82).

In accordance with the above-stated test approved by Lord Cairns, L.C., it was determined that compensation could be claimed in respect of an hotel, where the street in which the hotel was situated was stopped up under statutory powers conferred by an Act incorporating the Lands Clauses Consolidation Act, 1845, whereby the value of the hotel for using, selling, or letting as an hotel and public-house was diminished (*Wadham* v. *North Eastern Railway Co.* (1884), 14 Q. B. D. 747) ; and in respect of premises including a garden from which a causeway ran down to low-water mark in the adjoining river, where the owner was deprived of the use of the causeway and of his communication with the river by reason of the embankment of the river and the formation of a road between it and the garden (*Buccleuch* (*Duke*) v. *Metropolitan Board of Works* (1872), L. R. 5 H. L. 418).

Interference with the means of access to premises by making the approach steeper (*Caledonian Railway Co.* v. *Walker's Trustees* (1882), 7 A. C. 259) or narrower (*Beckett* v. *Midland Railway Co., supra ; Chamberlain* v. *West End of London and Crystal Palace Railway Co.* (1862), 2 B. & S. 605), by the stopping up of one highway and the substitution of another (*Metropolitan Board of Works* v. *Howard* (1889), 5 T. L. R. 732), or by altering the level of a street and so rendering the access dangerous or inconvenient (*Reg.* v. *Wallasey Local Board of Health* (1869), L. R. 4 Q. B. 351 ; *Reg.* v. *St. Luke's, Chelsea* (1871), L. R. 7 Q. B. 148 ; *Moore* v. *Great Southern and Western Railway Co.* (1859), 10 Ir. C. L. R. 46), are likewise grounds for compensation.

In *Beckett* v. *Midland Railway Co.* (1867), L. R. 3 C. P. 82, Willes, J., referring to the nature of the damage for which compensation may be awarded, said : " The damage complained of must be one which is sustained in respect of the ownership of the property—in respect of the property itself, and not in respect of any particular use to which it may from time to time be put : in other words, it must, as I read that judgment (the judgment of the House of Lords in *Ricket* v. *Metropolitan Railway Co.* (1867), L. R. 2 H. L. 175), be a damage which would be sustained by any person who was the owner, to whatever use he might think proper to put the property. Now that, of course, is to be taken with the limitation that a person who owns a house is not to be expected to pull it down in order to use the land for agricultural purposes. That would be pushing the judgment in *Ricket* v. *Metropolitan Railway Co., supra*, to an absurd extent. The property is to be taken *in statu quo*, and to be considered with reference to the use to which any owner might put it in its then condition, that is, as a house."

Obstruction of an easement is ground for compensation. Thus, where there appertained to certain land a right of way over a private road, and a railway company under their statutory powers constructed a railway crossing the road on a level and erected gates on each side of the railway which were kept locked, it was held that the land was injuriously affected and the owner entitled to compensation (*Glover* v. *North Staffordshire*

Railway Co. (1851), 16 Q. B. 912). In another case (*Ford* v. *Metropolitan and Metropolitan District Railway Cos.* (1886), 17 Q. B. D. 12) a house was divided into a front and a back block, the plaintiff being lessee of three rooms on the first floor in the back block. The lease did not expressly grant any mode of access; but access was in fact gained from the street by passing through a hall and then up some stairs. The defendants, in the exercise of their compulsory powers, took down the front block of the house and removed the hall. It was held that the access through the hall was not a way of necessity, but was in the nature of a continuous and apparent easement which passed under the demise of the rooms, and that an interference with this quasi-easement was sufficient to give rise to a valid claim for compensation. See also the cases of *Furness Railway Co.* v. *Cumberland Co-operative Building Society* (1884), 52 L. T. 144, and *Barnard* v. *Great Western Railway Co.* (1902), 86 L. T. 798.

So, where there is obstruction of a right of light a cause for compensation arises (*Eagle* v. *Charing Cross Railway Co.* (1867), L. R. 2 C. P. 638; *Wigram* v. *Fryer* (1887), 36 Ch. Div. 87; *London, Tilbury, etc., Railway Co. and Gower's Walk Schools* (*Trustees*), *In re* (1889), 24 Q. B. D. 326).

The breach of a restrictive covenant may be the ground for a claim for compensation by the owner of land for the benefit of which the restriction was imposed (*Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437; *Long Eaton Recreation Grounds Co.* v. *Midland Railway Co.*, [1902] 2 K. B. 574; *Manchester, Sheffield and Lincolnshire Railway Co.* v. *Anderson*, [1898] 2 Ch. 394. In *Long Eaton Recreation Grounds Co.* v. *Midland Railway Co.* part of certain lands belonging to the Long Eaton Recreation Grounds Company were sold by the company in fee simple subject to covenants that the grantees should not erect thereon any building other than private dwelling-houses and should not carry on upon them any noisy trade. These covenants were for the benefit of the land remaining the property of the company. The railway company acquired the lands sold by the recreation grounds company, but took none of the lands still remaining the property of the recreation grounds company.

On the land so acquired the railway company erected an embankment and a railway line over which it ran trains. The Court held that the erection of the embankment and the laying of the railway line was a breach of the covenant not to erect buildings other than private dwelling-houses, and that the running of trains was a breach of the covenant not to carry on a noisy trade, and that the breach of these restrictive covenants amounted to an injurious affecting of land still remaining the property of the recreation grounds company.

An example of cases, where compensation is not recoverable on the ground that the rights interfered with are not rights attached to the premises in respect of which the claim is made, is to be found in *Reg.* v. *Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358. In that case the claimants were potters occupying premises in a street running at right angles with the river Thames. At the end of the street where it went down to the river was a common right from time immemorial for all persons freely to dip and take water from the river for their own use and without payment ; and there was a right of access to the river for that purpose. At the end of a neighbouring street where it went down to the river there was a free public draw-dock. The public generally had a right to use this dock and to take carts there and to load and unload barges. In constructing an embankment to the river the access to the spot where water was taken had been practically cut off, so that the right to take water could not be exercised as before ; and at the draw-dock only one or two barges could be got up to load or unload instead of four or five as formerly, and the access to the dock by barges was attended with difficulty and danger. The claimants, in carrying on their business of potters, had been in the habit of dipping for water at the end of the street where their premises were situate and had been used to have the sand for their business brought by barges to the draw-dock. It was admitted that there was no right or easement appurtenant to the claimant's premises to go to the river to get water or to use the draw-dock. There was thus no damage to the premises themselves and compensation was irrecoverable.

Compensation only recoverable in respect of authorised acts.—

No compensation can be recovered except for injuries that may be occasioned in exercise of the statutory powers conferred upon the responsible authority (*Caledonian Railway Co.* v. *Colt* (1860), 3 Macq. 833 ; *Imperial Gas Light and Coke Co.* v. *Broadbent* (1859), 7 H. L. C. 600).

If an act is done which is not authorised or there is negligence in doing an authorised act, the party injured has a remedy by action, but is not entitled to compensation (*Lawrence* v. *Great Northern Railway Co.* (1851), 16 Q. B. 643 ; *Brine* v. *Great Western Railway Co.* (1862), 31 L. J. Q. B. 101 ; *Clothier* v. *Webster* (1862), 12 C. B. (N.S.) 790 ; *Biscoe* v. *Great Eastern Railway Co.* (1873), L. R. 16 Eq. 636 ; *Geddis* v. *Proprietors of Bann Reservoir* (1878), 3 App. Cas. 430 ; *Roberts* v. *Charing Cross, Euston and Hampstead Railway Co.* (1903), 87 L. T. 732 ; *Lewis and Solome* v. *Charing Cross, Euston and Hampstead Railway Co.*, [1906] 1 Ch. 508).

Injury must arise from the construction of the works, not from their user.—Compensation is only recoverable in respect of damage caused by the construction of the authorised works and not by their subsequent user. Thus it was held in the well-known case of *Hammersmith Railway Co.* v. *Brand* (1869), L. R. 4 H. L. 171, that, where a house near a railway is depreciated in value by reason of the vibration caused by passing trains, the owner is not entitled to recover compensation for such depreciation. See also *London, Brighton and South Coast Railway Co.* v. *Truman* (1885), 11 A. C. 45 ; *Attorney-General* v. *Metropolitan Railway Co.*, [1894] 1 Q. B. 384, and *Hopkins* v. *Great Northern Railway Co.* (1877), 2 Q. B. D. 224.

With respect to cases where the person from whom land is taken owns neighbouring lands, see pp. 94, 95.

Damage must have been actionable.—In the case of *Penny and South Eastern Railway Co., In re* (1857), 7 E. & B. 660—where it was held that compensation could not be claimed for an annoyance caused by persons standing on the bank of a railway and overlooking the claimant's premises, such annoyance being an injury to the amenity of the claimant's residence and not injuriously affecting his property—Lord CAMPBELL said : " The test is whether, before the Railway Act was passed

authorising the company to do what has been done here, an action would have lain at Common Law for what has been done and for which compensation has been claimed. If it would and that act is authorised by the Railway Act, compensation may be claimed in respect of it; if the land is not taken and nothing is done which would have afforded a cause of action before the Act passed, then, although it may produce a deterioration of the property, it does not injuriously affect the land and constitute a ground for compensation." This proposition was approved by the House of Lords in *Ricket* v. *Metropolitan Railway Co.* (1867), L. R. 2 H. L. 175; *Metropolitan Board of Works* v. *McCarthy* (1874), L. R. 7 H. L. 243.

In order to have a right to compensation in respect of an act done under the statutory powers, the person claiming must have had a good cause of action in respect of that act, if it had been done by any person not so authorised. The land which has been acquired may therefore be used by the responsible authority, without conferring any right to compensation, in any way in which it might theretofore have been lawfully used. Thus, for example, they may block up access of light and air so long as no easement is interfered with (*Butt* v. *Imperial Gas Co.* (1866), 2 Ch. App. 158; *Eagle* v. *Charing Cross Railway Co.* (1867), L. R. 2 C. P. 638); they may remove the support of buildings in cases where the right of support has not been acquired (*Metropolitan Board of Works* v. *Metropolitan Railway Co.* (1868), L. R. 3 C. P. 612; (1869), L. R. 4 C. P. 192); they may sink springs and draw off the underground water (*New River Co.* v. *Johnson* (1860), 29 L. J. M. C. 93; *Reg.* v. *Metropolitan Board of Works* (1863), 32 L. J. Q. B. 105); they may pull down houses and so injure the business of neighbouring shops (*Reg.* v. *Vaughan* (1868), L. R. 4 Q. B. 190); and they may block up private roads on building estates unless the persons damaged can show they have a right to such roads (*Fleming* v. *Newport Railway Co.* (1883), 8 App. Cas. 265; *Furness Railway Co.* v. *Cumberland Co-operative Building Society* (1884), 52 L. T. 144).

Measure of compensation.—The amount of compensation is, in general, to be calculated according to the rules applicable

to damages in actions for tort (*Re London, Tilbury and Southend Railway Co. and Gower's Walk Schools* (*Trustees*) (1889), 24 Q. B. D. 326). Accordingly damages which would be too remote to be recovered in an action cannot be recovered as compensation (*Re Clarke and Wandsworth Board of Works* (1868), 17 L. T. 549).

Betterment.—In the case of *Eagle* v. *Charing Cross Railway Co.* (1867), L. R. 2 C. P. 638, an umpire, to whom a claim for compensation had been referred in respect of damage sustained in consequence of premises being injuriously affected by the erection of certain works, found by his award that the erection of the works had occasioned a diminution of light to the plaintiff's premises, whereby they were rendered less convenient and suitable for the requirements of the trade carried on therein. The umpire further found that, notwithstanding such diminution of light, the saleable value of the plaintiff's interest in the premises was not diminished (the value of property in the neighbourhood generally having become greatly enhanced by reason of the works). The Court held that the diminution of light was an injurious affecting of the plaintiff's interest in the premises which entitled him to compensation and that it was no answer that the saleable value of the premises was not, for the reason stated, diminished. As a ground for not taking into consideration the enhancement in value of the premises arising from the erection of the works Montague Smith, J., said: "A man is not to be driven to sell his property. He may choose to continue his business." But, although the betterment of property is not to be considered in estimating compensation under s. 68 of the Lands Clauses Consolidation Act, 1845, in reference to the acquisition of land for the purpose of a town planning scheme, nevertheless a substantive claim for betterment by reason of the making of a town planning scheme may be made under s. 58 (3) of the Housing, Town Planning, etc. Act, 1909 (see p. 157).

CHAPTER VIII.—COMPENSATION IN RESPECT OF PROPERTY INJURIOUSLY AFFECTED BY SCHEME—BETTERMENT.

Provision is made by the Town Planning Acts, 1909 to 1923, for the payment by the responsible authority of compensation in respect of property injuriously affected by the making of a town planning scheme and in respect of expenditure incurred for the purpose of complying with a scheme, but rendered abortive by reason of the revocation of the scheme; and also for the payment to the responsible authority, where property is increased in value by the making of a scheme, of one-half of the amount of the increase. These provisions are about to be considered.

1. Compensation.

Any person whose property is injuriously affected by the making of a town planning scheme is entitled, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by the regulations made by the Minister of Health, to obtain compensation in respect thereof from the responsible authority (Housing, Town Planning, etc. Act, 1909, s. 58 (1)).

Compensation is payable by the responsible authority to "any person whose property is injuriously affected by the making of a town planning scheme."

It will be observed that the right to compensation is not restricted to persons owning land actually embraced by the scheme; the owners of property situated outside the area comprised in the scheme may make claims.

The making of a town planning scheme.—The right to compensation arises in respect of injurious affection of property caused "by the making of a town planning scheme," which, it is apprehended, means "by a town planning scheme being made." The injury contemplated results from the scheme itself, from the "provisions contained" therein (*cf.* s. 59 (1), (2)). A scheme, it would appear, is "made" when the same is approved by the Minister of Health (see p. 36). The measure of compensation, it is submitted, will be (subject to the special provisions considered hereafter) the difference between the value of the property subsequent to the scheme being so made and the value the property would have possessed if the scheme had not been made.

Property may be injuriously affected by a scheme in different ways. It may be that the making of the scheme, apart from any particular provisions in it, has the effect of depreciating the value of property. Or it may be that the scheme contains provisions of a prohibitive or negative character which diminish the use to which property may be put and so lessen its value. On the other hand, the scheme may contain provisions of a sort which require the execution of works or the like to be carried into effect, and such provisions when complied with may injuriously affect property. Where property is injuriously affected merely as the general result of the making of a scheme or by particular prohibitive provisions, there seems no reason why the assessment of compensation should not proceed directly the scheme is approved by the Minister of Health; but, where the property is affected by provisions which require the execution of works or the like, a more accurate determination of the effect of such provisions would probably be ascertainable after the same have been complied with. It is submitted, however, that where property is affected by such provisions the assessment of compensation need not be delayed but may be made in anticipation—ss. 58 (1), (3) and 59 (1), (2) of the Housing, Town Planning, etc. Act, 1909 (see pp. 156 to 158), referring to the injury arising from the making of the scheme and of the provisions contained in or inserted in the scheme. But it is to be remarked that in reference to s. 58 (3) of that

Act (see p. 157)—which requires the owner of property increased in value "by the making of a town planning scheme" to pay one-half of the amount of such increase to the responsible authority—paragraph 19 of Sched. IV. of the Act (see p. 166) provides for the charging on the inheritance of any land the value of which is increased "by the operation of a town planning scheme" the sum required to be paid in respect of the increase. Again, s. 38 and Sched. III. of the Housing, Town Planning, etc. (Scotland) Act, 1919, amends (see p. 147), s. 58 (1) of the Housing, Town Planning, etc. Act, 1909, so as to entitle to compensation "any person whose property is injuriously affected by the making of a town planning scheme or by the carrying into effect of any provision of a town planning scheme." It is to be remembered (see p. 85) that Part II. of the Housing, Town Planning, etc. Act, 1909, applies to Scotland and that Part II. of the Housing, Town Planning, etc. (Scotland), Act, 1919, is substantially the same as Part II. of the English Act of 1919; and, as the above amendment in the Scotch Act of 1919 with respect to s. 58 (1) of the Act of 1909 is spoken of as a "minor" amendment, it may well be contended that the amendment is to be treated as an explanatory one merely, and is to be regarded as a legislative comment upon the meaning of s. 59 (1) of the Act of 1909 as it stands for the purposes of English law. The importance, of course, of the above references to s. 58 of the Act of 1909 in paragraph 19 of Sched. IV. of that Act, and in s. 38 and Sched III. of the Scottish Act of 1919, is that they indicate that the compensation granted under s. 58 (1) in respect of injury arising from provisions in a scheme requiring the execution of works is not to be assessed until such provisions have been carried into effect. However, having regard to the language of ss. 58 and 59 of the Act of 1909, and to the fact that under s. 58 (1) compensation may at once be claimed and it is permissible for the scheme to contain a time limit which may expire long before all the provisions of the scheme are carried into effect, it is submitted that, at least as regards England, the assessment of compensation is not to be delayed until any provisions affecting the property in question, which require work to be done, are put into execution,

but that full compensation may be assessed as soon as the scheme is made, regard being had in anticipation to the ultimate effect of any positive provisions of the scheme which are required to be carried out. See further at pp. 112, 113, under "Time for making claim."

The term "property."—Questions of some difficulty arise in defining what is comprised in the expression "property" as used in s. 58 of the Housing, Town Planning, etc. Act, 1909, and how such property may be "injuriously affected" by the making of a town planning scheme.

It may be doubted whether the expression "property"—which in its fullest sense is a very comprehensive term—means, as used in ss. 58 and 59 of the Housing, Town Planning, etc. Act, 1909, more than land and buildings and other works constructed in or upon land, including rights over and interests connected with land. This view appears to be supported by the consideration that such is the class of property to which the provisions of town planning schemes are intended to relate and by the fact that the various clauses in ss. 58 and 59 which contain provisions limiting the right to compensation—s. 58 (2), see p. 156, and s. 59 (1) and (2), see pp. 157, 158—all have reference to land and interests therein. It may specially be remarked that s. 58 (2) of the Act of 1909 (as amended by ss. 45 and 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919), disentitles a person from obtaining compensation, except in certain cases, on account of "any building erected on, or contract made or other thing done" with respect to "land" included in a scheme—which rather indicates that "land" is the species of property to which ss. 58 and 59 of the Act of 1909 relate. It is also worthy of observation that in the Housing of the Working Classes Act, 1890, an instance is to be found of "land" and "property" being used as interchangeable terms. Section 21 (1) of that Act provides that "whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this part of this Act requires to be assessed —(*a*) the estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time

of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of property which may be constituted an unhealthy area under this part of this Act; and (*b*) in such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this part of this Act of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands." The terms "property" and "land" appear to be used in this provision as having substantially the same meanings.

In assessing compensation in respect of injurious affection by the making of a town planning scheme, it appears that regard may be had not only to depreciation in the value of the land itself and the buildings and works thereon, but also to loss arising in relation to "contracts made and other things done with respect to" the land which are interfered with or rendered valueless by the making of the scheme (see s. 58 (2) of the Housing, Town Planning, etc. Act, 1909, at p. 156).

"*Injuriously affected.*"—There remains to be considered the further question as to when property may be said to be "injuriously affected" by the making of a town planning scheme. Speaking generally, property may be said to be injuriously affected by a town planning scheme when the scheme contains provisions which are detrimental to the enjoyment or constitute a hindrance to the development of the property and so diminish its market value. It is impossible

to enumerate in detail the various ways in which such injurious affection may arise. It may be that the scheme provides that a strip across certain lands may be declared by the responsible authority a street, so that there will follow a right of entry to execute the street works. Such a provision undoubtedly affects the value of the land; whether injuriously or not is a matter for argument upon the circumstances of the particular case. Provisions respecting the diversion or stopping up of highways may clearly injuriously affect property. So may also provisions respecting building lines. In the case of *Re Ellis* and *Ruislip-Northwood Urban District Council*, [1920] 1 K. B. 343, the owner of land having a frontage to a street received compensation in respect of a provision in a town planning scheme prohibiting building along the frontage within seven feet of the street. Provisions enabling the responsible authority to prescribe lines beyond which walls, fences, hedges, and trees may not be erected or permitted to grow or to prohibit the felling of trees may also clearly prove injurious to land from the point of view of its market value.

The words "injuriously affected" will no doubt remind the reader of the provision in s. 68 of the Lands Clauses Consolidation Act, 1845, whereunder compensation is recoverable "in respect of any lands or of any interest therein which shall have been injuriously affected by the execution of the works." Section 68 does not, of course, refer to the lands which have actually been acquired, by agreement or compulsorily as the case may be, for the purposes of the authorised works; but to neighbouring lands which the execution of such works has injuriously affected. So, too, s. 58 of the Housing, Town Planning, etc. Act, 1909, does not apply to the compensation to be made in respect of lands which have been actually acquired by the responsible authority for the purposes of a town planning scheme; s. 60 of the Act deals with such acquisition of lands, and compensation will be recoverable in respect of the same in accordance with the principles stated at pp. 88 to 95. Section 58 applies to the compensation to be made on account of lands injuriously affected by the making of the scheme. It may well be that land, which is designated by the scheme as land

that the responsible authority may in due course purchase and for which they will then be required to pay compensation in accordance with the ordinary principles which apply to the assessment of compensation in respect of land acquired for public purposes (see pp. 88 to 95) will in the first instance fall within s. 58 of the Act, 1909, as being land "injuriously affected by the making of a town planning scheme." Presumably compensation will in such a case be given under s. 58; and, when the land subsequently passes into the hands of the responsible authority, its value will be so much the less. At any rate it would appear that this should be so in theory. It may be that in practice, owing to a faulty calculation under s. 58, the owner may find himself a good deal better or a good deal worse off as a result of the two compensations.

Although the words "injuriously affected" appear alike in s. 58 of the Housing, Town Planning, etc. Act, 1909, and in s. 68 of the Lands Clauses Consolidation Act, 1845, and in both cases have reference to lands, it is not to be assumed that the principles which have been laid down by the Courts (see pp. 95 to 104) as applicable to compensation under s. 68 of the Act of 1845 apply to compensation under s. 58 of the Act of 1909. It is to be observed first that the words "injuriously affected" are not technical words; and, secondly, that the subject-matter in respect of which compensation is recoverable differs in the two statutes. However, in considering the application of s. 59 of the Act of 1909, it may often prove useful to study the cases which have been determined under s. 68 of the Act of 1845. Thus, just as compensation may be claimed under s. 68 of the Lands Clauses Consolidation Act, 1845, in respect of provisions which destroy or interfere with the means of access to premises (see p. 100), or affect an easement appertaining to property such as a right of way (see p. 99), or constitute a breach of a restrictive covenant which has been imposed for the benefit of property (see p. 100), so too it would appear that for like reasons compensation may be recovered under s. 58 of the Housing, Town Planning, etc. Act, 1909. On the other hand, in the same way that compensation may not be claimed under s. 68 of the Act of 1845, on account of damage to trade or

business carried on upon the land (see p. 96), or on account of personal inconvenience occasioned to the owner of the land (see p. 97), or by reason of the destruction of a right extraneous to land enjoyed by the owner in common with the public generally and not being a private right appurtenant to the land (see p. 101), so it may well be these do not constitute matters for compensation on the ground that they injuriously affect property within the meaning of s. 58 of the Act of 1909.

Time for making claim.—The claim for compensation must be made within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by the regulations made by the Minister of Health. As to the manner prescribed, see pp. 34 to 36.

If reference is made to the model clauses it will be found (clause 57, see p. 257) that twelve months from the date of the approval of the scheme is the time laid down within which claims for compensation must, in general, be made. The model clause, however, gives an extension of time in respect of claims " arising out of the exercise by the council of any power conferred on them by clauses 6 (2), 10, 33, 37, or 38." The powers conferred by these clauses are respectively those of declaring land to be a street, carrying with it the right of entry and the power to execute street works ; of declaring land, in respect of which a plan has been submitted by the persons interested for utilising the same as a new street, to be deemed to be land designated by the scheme for the construction of a street by the council ; of fixing building lines ; of prescribing lines (for the purpose of securing the safety of traffic) for walls, fences, hedges, trees, etc. ; and of preserving trees. A claim, arising out of the exercise by the council of any of these powers, may (according to the model clause) " be made at any time not later than twelve months after the date on which notice is given by the council to the claimant of the exercise by them of such power or of their intention to exercise such power, as the case may be, or, where an appeal lies and is made to the Minister of Health against the exercise by the council of such

power, the date on which notice is given to the claimant of the Minister's decision on the appeal."

The language of the clause would suggest that the right to make a claim does not arise until the council exercise the powers mentioned. As has already been pointed out (see p. 106), the claim arises from "the making of the town planning scheme." The claim may be asserted immediately, and in that event the anticipatory damage which will result from the probable or possible exercise of the powers of the responsible authority must be calculated. It is suggested that the wording of clause 57 would have been better if an extension of time had been given in respect of claims "arising out of any provision in clauses 6 (2), 10, 33, 37, or 38 conferring a power upon the council."

One claim only admissible.—It is further to be observed that s. 57 of the Act of 1909 only appears to contemplate the making of one claim. Clause 57 is so drafted as not to imply that there is power to make more than one. It does not appear that a person, whose property is injuriously affected by the making of a scheme, may put forward one claim in respect of some provisions and later on a second in respect of others. It is submitted that, when once he makes a claim, the amount of the compensation to which he is entitled is to be calculated for good and for all. Further, when a claim for compensation is put forward on various specific grounds by the owner of property, it would appear that the responsible authority may allege in answer to or in mitigation of the claim that the scheme contains provisions which tend to enhance the value of the property—the question at issue being the comprehensive one whether the property is "injuriously affected by the making of the scheme."

Notice of claim and assessment of compensation.—As to notice of claim, see p. 125; and for a form, see p. 266. As to the assessment of compensation, see pp. 125 *et seq.*

Erection of buildings, etc., after resolution to prepare scheme.—A person is not entitled to obtain compensation on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme after the date of the

resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect, as the case may be, or after such other time as the Minister of Health may fix for the purpose (Housing, Town Planning, etc. Act, 1909, s. 58 (2); Housing, Town Planning, etc. Act, 1919, s. 48, Sched. III.). This provision is not to apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before such date or other time as aforesaid (*ibid.*); nor is it to apply as respects any building erected, contract made, or other thing done in accordance with a permission granted in pursuance of an order of the Minister of Health allowing the development of estates and building operations to proceed pending the preparation or adoption and approval of the scheme; and the carrying out of works so permitted will not prejudice any claim of any person to compensation in respect of property injuriously affected by the making of the scheme (Housing, Town Planning, etc. Act, 1919, s. 45).

As to the passing of a resolution by a local authority to prepare or adopt a scheme, see s. 42 of the Housing, Town Planning, etc. Act, 1919, pp. 168, 169. The resolution does not take effect until approved by the Minister of Health where the resolution extends to land not within the area of the local authority passing the resolution. As to the approval of a scheme by the Minister of Health, see pp. 36 to 38. And as to the making of a special or general order by the Minister of Health enabling permission to be given for the development of estates and building operations to proceed pending the preparation or adoption and approval of a town planning scheme, see pp. 12, 13, and the Town Planning (General Interim Development) Order, 1922, Appendix B (II), pp. 186 to 190.

It will be noted that the time which the Minister of Health may fix for the purposes of s. 58 (2) of the Act of 1909 is not necessarily after the date of the passing of the resolution of the local authority; there may be cases where the Minister may conceive it to be equitable that the time should be earlier than such date.

With respect to the above provisions it will be observed

that compensation is not in any case payable on account of things done in respect to land after the date of the approval of the scheme by the Minister of Health. In general no compensation is payable on account of things done subsequent to the date of the resolution to prepare or adopt the scheme or to the date when such resolution becomes effective, as the case may be, or such other time as may be fixed by the Minister of Health. But compensation may be paid in respect of work done after such date or time for the purpose of finishing a building or of carrying out a contract; and also in respect of things done with regard to land in accordance with permission granted in pursuance of an order of the Minister of Health allowing the development of estates and building operations to proceed.

In this connection it may be mentioned that a local authority may not refuse to approve building plans relating to an estate, which are in accordance with the bye-laws, on the ground that they are contemplating the preparation of a town planning scheme, the making of which would affect the building estate. In the case of *Rex* v. *West Ham Borough Council*, "Times," 1st March, 1911, a rule *nisi* was granted for a *mandamus* to the borough council to approve the plans under such circumstances. It appears that at the next meeting of the borough council the plans were approved, so that there was no further argument in relation to the rule (Glen's Local Government Case Law, 1911, pp. 206, 207). On the application for the rule reliance was placed upon the case of *Reg.* v. *Tynemouth Rural District Council*, [1896] 2 Q. B. 451, where it was held that the district council were not entitled to attach conditions to the approval by them of building plans in accordance with the bye-laws.

Compensation not payable in respect of provisions of scheme enforceable as bye-laws.—Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation may be paid in respect thereof if or so far as the provisions are also contained in any public general or local Act or order having the force of an Act of Parliament in force in the area, or are such as

would have been enforceable if they had been contained in bye-laws made by the local authority (Housing, Town Planning, etc. Act, 1909, s. 59 (1); Housing, etc. Act, 1923, s. 16 and Sched. II.).

The canon of construction applicable with respect to statutory exceptions to the right of compensation on account of injurious affection to property by reason of provisions contained in a town planning scheme is that such exceptions must not be deemed to take away or extinguish the right unless it appears by express words or plain implication that it was the intention of the Legislature so to do (*Western Counties Railway Co.* v. *Windsor and Annapolis Railway Co.* (1882), 7 App. Cas. 178, at p. 188; *Attorney-General* v. *Horner* (1884), 14 Q. B. D. 245, at p. 257; *Commissioner of Public Works* (*Cape Colony*) v. *Logan*, [1903] A. C. 355, at p. 363; *London and North Western Railway Co.* v. *Evans*, [1893] 1 Ch. 16, at p. 28). Accordingly, where the responsible authority allege that no compensation is payable in respect of property injuriously affected by a provision in a scheme on the ground that such provision would have been enforceable if it had been contained in a bye-law made by the local authority who prepared or adopted the scheme, it must be shown that the provision as such might have been contained in a bye-law and not merely that the effect of the provision might have been brought about by a bye-law (*Re Ellis* and *Ruislip-Northwood Urban District Council*, [1920] 1 K. B. 343). In that case the plaintiff was the owner of a strip of land, which abutted on a street, of about 400 feet in length and of a width varying from 50 feet to 28 feet. By the provisions of a town planning scheme a building line was prescribed along the whole length of the plaintiff's land seven feet back from the street. The imposition of the building line rendered a considerable area of the plaintiff's land of insufficient depth for building purposes, and he accordingly claimed compensation under s. 58 of the Housing, Town Planning, etc. Act, 1909. The defendant council resisted the claim under s. 59 (1) of the Act on the ground that, although they were not empowered to make a bye-law prescribing the building line, yet they were enabled under s. 157 of the Public

Health Act, 1875, to make a bye-law with respect to "the sufficiency of the space about buildings to secure a free circulation of air" which would produce the same result. The Court of Appeal were of opinion that, even if a like effect to the prescription of the building line could be created by a valid bye-law, nevertheless, since the defendant council were not empowered to make direct bye-laws respecting building lines, s. 59 (1) of the Act of 1909 did not apply and the plaintiff was entitled to compensation.

Compensation is not payable in respect of provisions in a scheme "if or so far as the provisions are such as would have been enforceable if they had been contained in bye-laws made by the local authority." The question as to whether any particular provision comes within this exception is to be determined according as a bye-law containing such provision would have been enforceable at the time of the making of the scheme. For the bye-law to have been enforceable there must of necessity have been power in the local authority to enact it; the bye-law must have been duly confirmed (Public Health Act, 1875, s. 184); the bye-law must not have been repugnant to the general law; it must be certain in its terms; and it must have been capable of passing the test of reasonableness as such (see *Kruse* v. *Johnson*, [1898] 2 Q. B. 91).

Under s. 157 of the Public Health Act, 1875, an urban authority is empowered to make bye-laws with respect to the following matters: (1) the level, width, and construction of new streets and the provisions for the sewerage thereof; (2) the structure of walls, foundations, roofs, and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health; (3) the sufficiency of the space about buildings to secure a free circulation of air, and ventilation of buildings; (4) the draining of buildings, water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings, the closing of buildings or parts of buildings unfit for human habitation, and the prohibition of their use for such habitation. The urban authority may provide for the observance of such bye-laws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit

of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority to remove, alter, or pull down any work begun or done in contravention of such bye-laws. Where an urban authority adopt Part III. of the Public Health Acts Amendment Act, 1890, they may also (s. 23 (1)) make bye-laws with respect to (1) the keeping water-closets supplied with sufficient water for flushing; (2) the structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation; (3) the paving of yards and open spaces in connection with dwelling-houses; and (4) the provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters. By s. 23 (4) they may make bye-laws to prevent buildings originally erected in accordance with the bye-laws from being altered so as to contravene the bye-laws.

Where a rural authority have adopted Part III. of the Public Health Acts Amendment Act, 1890 (so far as it is declared to be applicable to such authority), the provisions of s. 157 of the Public Health Act, 1875 (as amended by the Act of 1890)—so far as they relate to bye-laws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to the matters mentioned in (3) and (4) of s. 157, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of water-closets supplied with sufficient water for flushing—extend to empower rural authorities to make bye-laws in respect to such matters and to provide for the observance of such bye-laws (Public Health Acts Amendment Act, 1890, s. 23 (3)). Further, irrespective of the adoption of Part III. of the Act of 1890, a rural authority may be invested by the Minister of Health under s. 276 of the Public Health Act, 1875, and s. 5 of the Public Health Acts Amendment Act, 1890, with the powers of urban authorities to make bye-laws under these Acts respectively either for the rural district generally or for one or more contributory places within it.

Under s. 24 of the Public Health Acts Amendment Act,

1907, bye-laws may be made by urban and rural authorities with respect to (1) the height of chimneys of buildings and the height of buildings; and (2) the structure of chimney shafts for the furnaces of steam engines, breweries, distilleries, or manufactories; and under ss. 82 and 83 bye-laws may be made as to the user of the seashore and promenades. But power to make such bye-laws must first be given by an order (as to s. 24) of the Minister of Health and (as to ss. 82 and 83) of a Secretary of State under s. 3 of the Act.

Compensation not payable in respect of certain building provisions.—Property is not to be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Minister of Health, having regard to the nature and situation of the land affected by the provisions, considers reasonable for the purpose (Housing, Town Planning, etc. Act, 1909, s. 59 (2); Housing, Town Planning, etc. Act, 1919, s. 48, Sched. III.).

In the Act of 1909 this provision read: "Property is not to be deemed to be injuriously affected by reason of the making of any provisions in a town planning scheme which, with a view to securing the amenity of the area included in the scheme or any part thereof, prescribe the space about buildings," etc. The words "with a view to securing the amenity of the area included in the scheme or any part thereof" were deleted by the Act of 1919.

It seems that the mere fact that provisions which "prescribe the space about buildings or limit the number of buildings to be erected or prescribe the height or character of buildings" are to be found in a scheme will not exclude a claimant from compensation by reason of s. 59 (2) of the Act of 1909. The Minister of Health must specifically state that he considers such provisions, having regard to the nature and situation of the land affected by them, are reasonable for the purpose for which they are framed.

A provision in a scheme prescribing building lines is not a provision "prescribing the space about buildings" within the

meaning of s. 59 (2) of the Housing, Town Planning, etc. Act, 1909 (*Re Ellis* and *Ruislip-Northwood Urban District Council*, [1920] 1 K. B. 343).

"The justification for s. 59 (2) would appear to be either that the advantages resulting to the property from the provision of the scheme are considered to equal or outweigh the injury complained of, or possibly that a man ought not to be allowed compensation for doing in reference to his property what apart from compulsion he ought to do voluntarily" (BANKES, L.J., in *Re Ellis* and *Ruislip-Northwood Urban District Council*, *supra*).

Where a scheme contains provisions prescribing the space about buildings or limiting the number of buildings to be erected or prescribing the height or character of buildings, it appears to be the practice of the Minister of Health to signify the fact that he considers them reasonable in his order approving the scheme.

Revocation or variation of scheme.—Where a town planning scheme is revoked by an order of the Minister of Health, any person who has incurred expenditure for the purpose of complying with the scheme is entitled to compensation in accordance with s. 58 of the Housing, Town Planning, etc. Act, 1909, in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme (Housing, Town Planning, etc. Act, 1909, s. 58 (6)).

Under s. 54 (6) of the Housing, Town Planning, etc. Act, 1909 (see p. 153), "a scheme may be varied or revoked by a subsequent scheme prepared or adopted and approved in accordance with the Act, and the Minister of Health, on the application of the responsible authority or of any other person appearing to him to be interested, may by order revoke a scheme if he thinks that under the special circumstances of the case the scheme should be so revoked." The above provision of the Act of 1909—s. 58 (6)—appears to relate only to schemes revoked by the second means referred to in s. 54 (6), namely, by an order of the Minister of Health made "on the application of the responsible authority or of any other person appearing to him to be interested." It does not apply to a scheme revoked by a subsequent scheme.

Where a scheme is entirely revoked by an order of the Minister of Health, s. 58 (6) would entitle *e.g.* an owner of property, who had incurred expenditure for the purpose of complying with the scheme, to compensation in so far as any such expenditure was rendered abortive by reason of the revocation of the scheme.

Where a scheme is revoked by another scheme, compensation will be payable to a person whose property has been injuriously affected by the second scheme under s. 58 (1), see p. 156; and an owner will be liable to make a payment to the responsible authority under s. 58 (3)—see p. 157—in the event of his property being increased in value by the second scheme. Similarly, where a scheme has been varied by a subsequent scheme, compensation will be recoverable by the owner or he will be liable to make a payment (as the case may be) under s. 58 (1), (3) of the Act of 1909. But, whether a scheme is revoked or varied by a subsequent scheme, no compensation will be recoverable by virtue of s. 54 (6) on account of expenditure incurred for the purpose of complying with the first scheme; although, indeed, if such expenditure should happen to be in respect of "property injuriously affected" by the subsequent scheme, it may be that compensation on account of the same will be recoverable under s. 58 (1).

The compensation arising upon the revocation of a scheme by the Minister of Health under s. 58 (6) of the Act of 1909 is expressed to be compensation "in accordance with this section." Presumably, therefore, the compensation will be assessed and recoverable in the same way as compensation under s. 58 (1) in respect of property injuriously affected by the making of a scheme—namely, under s. 58 (4), (5), as to which see pp. 124 to 128.

Where compensation is payable under another Act.—Where a person is entitled to compensation under Part II. of the Housing, Town Planning, etc. Act, 1909, in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he will not be entitled to compensation in respect of that matter or thing both under the Housing, Town Planning, etc. Act, 1909,

and under that other enactment, and will not be entitled to any greater compensation under the Housing, Town Planning, etc. Act, 1909, than he would be entitled to under the other enactment (Housing, Town Planning, etc. Act, 1909, s. 59 (3)).

It will be observed that, although compensation is limited to the amount recoverable under the other enactment, the claim may be preferred under the provisions of the Housing, Town Planning, etc. Act, 1909.

It is quite possible the Legislature had no particular enactments in mind when passing the above provision prohibiting dual compensation; but inserted the provision as a precautionary measure. Compensation in respect of matters of a like character to those which may be embraced by town planning schemes is given in different statutes. Thus under s. 155 of the Public Health Act, 1875, when any house or building situated in a street in an urban district has been taken down in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building to be built or rebuilt in the same situation may be erected, but must pay compensation for any loss or damage sustained in consequence of the house or building being set backward or forward; and s. 308 makes general provision for full compensation where any person sustains damage by reason of the exercise of any of the powers of the Act in relation to any matter as to which he is not himself in default. Under s. 15 of the London Building Act, 1894, compensation may be claimed in certain cases where the London County Council require streets to be of greater width than forty feet or where a distance greater than twenty feet from the centre of the roadway is prescribed for the erection of the fronts of new buildings; and s. 23 provides for the payment of compensation in the case of a building, which projects beyond the general line of buildings in a street, being taken down or destroyed by fire or other casualty and the county council requiring the new building to be set back. But it does not seem that provisions of this kind can be applicable so as to fall within the scope of s. 59 (3) of the Housing, Town Planning, etc. Act, 1909, forbidding dual compensation.

2. Betterment.

Where, by the making of a town planning scheme, any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Minister of Health), is entitled to recover from any person whose property is so increased in value one-half of the amount of that increase (Housing, Town Planning, etc. Act, 1909, s. 58 (3)).

There is thus payable to the responsible authority, in respect of property increased in value by the making of a town planning scheme, one-half of the amount of such increase.

It will be observed that the liability to make such a payment is not restricted to persons owning land actually embraced by the scheme; the owners of property situated outside the area comprised in the scheme may also be liable.

The liability arises in respect of property increased in value "by the making of a town planning scheme," which, it is apprehended, means "by a town planning scheme being made." The increase in value, which is referred to, results from the scheme itself, from the provisions contained therein. A scheme, it would appear, is "made" when the same is approved by the Minister of Health (see pp. 36 to 38). The increase in value, it is submitted, will be the difference between the value of the property subsequent to the scheme being so made and the value the property would have possessed if the town planning scheme had not been made. In determining the increase in value upon this footing the effect of the carrying out of the provisions of the scheme, which necessitate works to be done and the like, may be measured in anticipation. An alternative rendering of s. 58 (3) of the Act of 1909 would require the assessment of the increase in value, where property is affected by such provisions, to be made after the provisions have actually been carried into effect. It is thought, however, that this is not a correct rendering. The matter is discussed at some length at pp. 106 to 108.

Although the term "property" in its fullest sense has a very comprehensive meaning, it may be doubted whether such term as used in s. 58 (3) of the Housing, Town Planning, etc. Act, 1909, means more than land and buildings and other works constructed in or upon land, including rights over and interests connected with land (see p. 108).

There can be little doubt that the making of a town planning scheme will generally have the effect of causing some property to "increase in value." This increase may arise in many ways. No doubt it will often be occasioned by land acquiring a valuable frontage through the making of a new road and so increasing in value as a building site. The opening up of roads will also cause land to increase in value by improving the means of access. Again, a building estate may increase in value by reason of its proximity to a garden or a park provided for by a town planning scheme.

The responsible authority must make their claim within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Minister of Health. As to the manner prescribed, see pp. 34 to 36. The model clauses require claims respecting the increase in the value of property due to the making of a scheme to be made within twelve months of the date of approval of the scheme (see clause 57, p. 257).

As to notice of claim see p. 125, and for a form see p. 267.

As to the determination of the amount payable to the responsible authority and its recovery, see s. 58 (4), (5) of the Housing, Town Planning, etc. Act, 1909, and the notes thereon, *infra*.

3. Assessment of Compensation and Betterment Payments.

Any question as to whether any property is injuriously affected or increased in value within the meaning of s. 58 of the Housing, Town Planning, etc. Act, 1909, and as to the amount and manner of payment (whether by instalments or

otherwise) of the sum which is to be paid as compensation or which the responsible authority are entitled to recover from a person whose property is increased in value, is to be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, unless the parties agree on some other method of determination (Housing, Town Planning, etc. Act, 1909, s. 58 (4); Housing, etc. Act, 1923, s. 18).

Before the passing of the Housing, etc. Act, 1923, such questions were to be determined by the arbitration of a single arbitrator appointed by the Minister of Health, unless the parties agreed on some other method of determination. The arbitration is now to be "under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919." This Act, of course, was passed for the purpose of the assessment of compensation in respect of land compulsorily acquired; and it is not always easy to adapt its provisions to the assessment of compensation or betterment under s. 58 of the Housing, Town Planning, etc. Act, 1909.

The official arbitrator.—As to the appointment of the official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919, see under "the arbitrator" at p. 76.

Notice of claim.—It would appear that a notice of claim should be given in conformity with s. 5 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919. See under "Costs of arbitration," *infra*. For forms, see Appendix G, pp. 266, 267.

Procedure before official arbitrator.—The official arbitrator is to hear the parties in public (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (5)).

In general the proceedings before the arbitrator are to be such as the arbitrator, subject to any special directions of the Reference Committee, may in his discretion think fit (Acquisition of Land (Assessment of Compensation) Rules, 1919, rule 4 (3)).

The parties must furnish to the arbitrator on his request any document or other information which it is in their power

to furnish and which the arbitrator may require for the purpose of considering and determining the case (*ibid.* rule 4 (2)).

Ordinarily only one expert witness may be heard on either side unless the official arbitrator otherwise directs (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (1)).

As to the subpœnaing of witnesses, see ss. 8 and 18 of the Arbitration Act, 1889; and as to the power of the arbitrator to administer oaths and take affirmations, see s. 7 (*a*) and Sched. I. (*f*), (*g*) of the same Act.

As to the fees to be charged in respect of proceedings before official arbitrators, see the Acquisition of Land (Assessment of Compensation) Fees Rules, 1920, and the Acquisition of Land (Assessment of Compensation) Fees (No. 2) Rules, 1920.

The award.—The official arbitrator must, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (3)).

The decision of the arbitrator upon any question of fact is final (*ibid.* s. 6 (1)).

Special case.—The official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 6 (1)). The decision of the High Court upon the case is to be final and not subject to appeal (*ibid.* s. 6 (2)).

Section 6 (1) of the Acquisition of Land (Assessment of Compensation) Act, 1919, is similar in language to ss. 7 (*b*) and 19 of the Arbitration Act, 1889, which refer to the statement of special cases under that Act. It is of importance to observe, as arbitrations under s. 58 of the Housing, Town Planning, etc. Act, 1909 are not unlikely to be productive

of questions of law, that the official arbitrator may be compelled to state a case "at any stage of the proceedings"—that is, before the proceedings have come to an end by a completed award (*Tabernacle Permanent Building Society* v. *Knight*, [1892] A. C. 298)—in respect of any question of law arising in the course of the proceedings, whereas it rests with the arbitrator whether he will state his award in the form of a special case. Should any question of law arise in the course of the proceedings, it may accordingly be found expedient to request the arbitrator to state his award in the form of a special case and, should he not express his intention to accede to the request, to consider whether steps should be taken to require him to state a case before his award has been given.

Costs of arbitration.—Presumably the principles laid down in s. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919, respecting costs should be applied as far as possible to arbitrations under s. 58 of the Housing, Town Planning, etc. Act, 1909, with respect to claims for injurious affection or betterment. Accordingly, where an unconditional offer in writing has been made and the sum awarded does not exceed the sum offered, the claimant should ordinarily bear his own costs and pay those of the other side after the date of the offer (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (1)). But this is subject to the delivery of a notice of claim, which should state the exact nature of the interest of the claimant and details of the claim, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated. If such a notice of claim is not delivered in sufficient time, the claimant will ordinarily be liable to pay the costs of the other side after the time when the notice should have been furnished (*ibid.* s. 5 (2)—see p. 80). Where the claimant makes an offer and the sum awarded is equal to or exceeds that sum, he will ordinarily be entitled to his costs after the date of the offer (*ibid.* s. 5 (3)—see p. 80).

Subject to the above provisions the costs of an arbitration are in the discretion of the official arbitrator (*ibid.* s. 5 (4)—see p. 80). As to taxation, see s. 5 (5), p. 80.

Assessment otherwise than by official arbitrator.—It will be observed that, instead of submitting to an official arbitrator any question as to whether any property is injuriously affected or increased in value by the making of a scheme and as to the payment to be made, the parties may "agree on some other method of determination" (see p. 125). They may, if they please, appoint any person as arbitrator (*cf.* Acquisition of Land (Assessment of Compensation) Act, 1919, s. 8 (1)).

Withdrawal of provisions of scheme.—The responsible authority may, instead of paying compensation that has been awarded, withdraw or modify the provisions of the scheme which gave rise to the claim for compensation (Housing, etc. Act, 1923, s. 20 (1), (2), pp. 174, 175).

Recovery of sum awarded.—Any amount due as compensation to a person from a responsible authority, or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt (Housing, Town Planning, etc. Act, 1909, s. 58 (5)); that is to say, proceedings to recover such compensation may be taken on complaint before a court of summary jurisdiction, but an order for payment, in default of distress or otherwise, may not be enforced by imprisonment except upon proof of means (Summary Jurisdiction Act, 1879, s. 31). It would also appear that the costs of an arbitration may be recovered summarily as a civil debt (see Acquisition of Land (Assessment of Compensation) Act, 1919, and *cf. Huddersfield Corporation* v. *Shaw* (1890), 54 J. P. 724).

With respect to charging on the inheritance of land a betterment payment, see s. 55 and Sched. IV. (19) of the Housing, Town Planning, etc. Act, 1909, at p. 43, and *cf.* model clause 58, p. 258.

No award of compensation in respect of property injuriously affected by the making of a scheme may be enforced within one month of the date of the award or pending the Minister's decision on a varying scheme, if the requisite notice has been given (Housing, etc. Act, 1923, s. 20 (3)—see pp. 174, 175).

CHAPTER IX.—POWERS AND DUTIES OF THE MINISTER OF HEALTH.

The Minister of Health, to whom were transferred by s. 3 (1) of the Ministry of Health Act, 1919, all the powers and duties of the Local Government Board, has, it will have been observed, general control over town planning schemes. The present chapter deals with the power of the Minister of Health to make regulations for various purposes (see pp. 129 to 131); the statutory provisions relating to the determination of matters by the Minister of Health as arbitrator or otherwise (see pp. 131 to 135); and the provisions respecting inquiries by the Minister of Health (see pp. 135 to 138).

The Minister may sue and be sued by the name of the Minister of Health, and may for all purposes be described by that name (Ministry of Health Act, 1919, s. 7 (1)).

1. Regulations with respect to Town Planning Schemes.

The Minister of Health may make regulations for regulating generally the procedure to be adopted with respect to the preparation or adoption of a town planning scheme, obtaining the approval of the Minister to a scheme so prepared or adopted, the variation or revocation of a scheme, and any inquiries, reports, notices, or other matters required in connection with the preparation or adoption or the approval of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof, or the variation or revocation of the scheme. The regulations are to provide: (*a*) for securing co-operation on the part of the local authority with the owners and other persons interested

in the land proposed to be included in the scheme by such means as may be provided by the regulations; (*b*) for securing that notice of the proposal to prepare or adopt the scheme should be given at the earliest stage possible to any council interested in the land; (*c*) for dealing with the other matters mentioned in the fifth schedule to the Housing, Town Planning, etc. Act, 1909 (see *infra*); and (*d*) for securing that the council of the county in which any land proposed to be included in a town planning scheme is situated (1) shall be furnished with a notice of any proposal to prepare or adopt such a scheme and with a copy of the draft scheme before the scheme is made, and (2) shall be entitled to be heard at any public local inquiry held by the Minister of Health in regard to the scheme (Housing, Town Planning, etc. Act, 1909, s. 56; Housing, Town Planning, etc. Act, 1919, ss. 43 (2), 48, and Sched. III.). The Minister of Health is also empowered to make regulations as to the procedure consequent on the passing of a resolution by a local authority to prepare or adopt a town planning scheme; and provision is to be made by those regulations for securing that a local authority after passing such a resolution shall proceed with all reasonable speed with the preparation or adoption of the town planning scheme, and shall comply with any regulations as to steps to be taken for that purpose, including provisions enabling the Minister of Health in the case of default or dilatoriness on the part of the local authority to act in the place and at the expense of the local authority (Housing, Town Planning, etc. Act, 1919, s. 43 (1)).

The fifth schedule to the Housing, Town Planning, etc. Act, 1909 (amended by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919), mentions the following matters: **1.** procedure anterior to the preparation or adoption of a scheme:—(*a*) preparation and deposit of plans; (*b*) publication of notices: 2. procedure during, on, and after the preparation or adoption and before the approval of the scheme:—(*a*) submission to the Minister of Health of the proposed scheme, with plans and estimates; (*b*) notice of submission of proposed scheme to the Minister of Health; (*c*) hearing of objections and representations by persons affected, including persons

representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme ; (*d*) publication of notice of intention to approve scheme and the lodging of objections thereto : 3. procedure after the approval of the scheme :—(*a*) notice to be given of approval of scheme : (*b*) inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme : 4. duty, at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme : 5. the details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.

See Chap. II. (pp. 15 to 17) as to the regulations that have been issued respecting the preparation and adoption of town planning schemes. The most important set of regulations now in force are comprised in the Ministry of Health (Town Planning) Regulations 1921, which are set out in Appendix B (I) and which are considered in detail at pp. 17 to 38. It will be observed that these regulations do not exhaust all the matters respecting which the Minister of Health is empowered to make regulations under the above provisions of the Housing, Town Planning, etc. Acts.

2. Determination of Matters by the Minister of Health.

Where the Minister of Health is authorised by Part II. of the Housing, Town Planning, etc. Act, 1909 (which relates to town planning), or any scheme made thereunder to determine any matter, it is, except as otherwise expressly provided by such part of the Act, at his option to determine the matter as arbitrator or otherwise, and, if he elects or is required to determine the matter as arbitrator, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, are to apply as if they were re-enacted in the Act of 1909 and in

terms made applicable to the Minister of Health and the determination of the matters aforesaid (Housing, Town Planning, etc. Act, 1909, s. 62 ; Ministry of Health Act, 1919, s. 3).

Thus, for example, under s. 54 (7) of the Housing, Town Planning, etc. Act, 1909, the decision of the Minister of Health as to whether land is " likely to be used for building purposes or not " is to be final ; and, nothing being said as to the mode of determination, the Minister may determine the matter as an arbitrator or otherwise. On the other hand, s. 57 (3) of the Act requires the Minister to determine any question as to " whether any building or work contravenes a town planning scheme or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work " as arbitrator, unless the parties otherwise agree ; so that, in default of any such agreement, the provisions of s. 62 of the Act relating to the determination of matters by the Minister as arbitrator will apply. See further on s. 57 (3) at p. 52.

Determination as arbitrator.—When the Minister of Health determines any matter as arbitrator the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade are to apply. Such provisions are contained in ss. 30 to 32 of the Act ; and, applying them to the Minister of Health and the determination of matters under Part II. of the Housing, Town Planning, etc. Act, 1909, and schemes made thereunder, are as follows:—(s. 30): Whenever the Minister of Health is required to make any award or decide any difference in any case he may appoint an arbitrator to act for him, and the award or decision of the arbitrator shall be deemed to be the award or decision of the Minister of Health. If the arbitrator dies, or in the judgment of the Minister becomes incapable or unfit, the Minister may appoint another arbitrator. (s. 31): The Minister of Health may fix the remuneration of any arbitrator or umpire appointed by him in pursuance of this Act and may, if he thinks fit, frame a scale of remuneration for arbitrators or umpires so appointed by him ; and no arbitrator or umpire so appointed by the Minister shall be entitled to any

larger remuneration than the amount fixed by the Minister. (s. 32): The provisions of ss. 18 to 29, both inclusive, of the Railway Companies Arbitration Act, 1859, shall, so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Minister of Health and to his arbitration and award.

The effect of ss. 18 to 29 of the Railway Companies Arbitration Act, 1859, is shortly as follows: Section 18 empowers the arbitrator to call for books and documents and to administer oaths. Section 19 gives him discretion as to the manner of proceeding with the arbitration. Section 20 enables him to proceed in the absence of parties. Section 21 enables him to make several awards, each on part of the matters referred, instead of one award on all the matters referred. Section 22 makes the award conclusive. Section 23 gives the arbitrator power to extend the time for making an award. Section 24 prevents the setting aside of an award for irregularity. Section 25 provides that parties shall obey the award; and s. 26 that all Courts shall give effect to awards. Section 27 enacts that costs shall be in the discretion of the arbitrator; and s. 28 that, in the absence of any order, costs are to be borne by the parties equally. Section 29 enables a submission to be made a rule of court.

The Arbitration Act, 1889, will apply to the arbitration except in so far as the same is inconsistent with the above provisions (Arbitration Act, 1889, s. 24). Accordingly the arbitrator may during the progress of the arbitration state a special case for the opinion of the Court (*ibid.* s. 19); or state his award as to the whole or part thereof in the form of a special case for the opinion of the Court (*ibid.* s. 7 (*b*)). Under s. 19 of the Act the Court may compel the arbitrator to state a case (*In re County Council of Kent and Sandgate Local Board*, [1895] 2 Q. B. 43).

Determination otherwise than as arbitrator.—Where the Minister of Health does not act as arbitrator, and does not exceed his jurisdiction, the Court will not interfere with his decision (*Rex* v. *Local Government Board, Ex parte Hackney Borough Council* (1908), 72 J. P. 211), and there is no power

to state a case for the opinion of the Court (*Bexley Local Board* v. *West Kent Main Sewerage Board* (1882), 9 Q. B. D. 518).

With respect to the procedure to be adopted by the Minister of Health when he determines a matter otherwise than as arbitrator the following passage from the judgment of Lord Loreburn, L.C., in the case of *Board of Education* v. *Rice*, [1911] A. C. 179, is well worthy of perusal. That case arose under s. 7 of the Education Act, 1902, sub-s. (3) whereof provides that "If any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education." Lord Loreburn said: "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under s. 7 (3) of this Act. The Board have, of course, no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the local education authority. The Board is in the nature of the arbitral tribunal, and a Court of Law has no jurisdiction to hear appeals from the determination either upon law or upon

fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by *mandamus* and *certiorari*." And see the judgments in *Local Government Board* v. *Arlidge*, [1915] A. C. 120, and *Rex* v. *Housing Appeal Tribunal*, [1920] 3 K. B. 334.

3. Inquiries by and Orders of the Minister of Health.

Section 85 of the Housing of the Working Classes Act, 1890 (which relates to inquiries by the Minister of Health), as amended by the Housing, Town Planning, etc. Act, 1909, is to apply for any purposes of Part II. of the latter Act (which relates to town planning) as it applies for the purpose of the execution of the powers and duties of the Minister of Health under the Act of 1890 (Housing, Town Planning, etc. Act, 1909, s. 63; Ministry of Health Act, 1919, s. 3).

The holding of inquiries and the costs.—Section 85 of the Housing of the Working Classes Act, 1890, is amended by ss. 46 and 75 and Scheds. II. and VI. of the Housing, Town Planning, etc. Act, 1909, and, as so amended and made applicable to the Minister of Health, is as follows: "(1) For the purposes of the execution of his powers and duties under this Act, the Minister of Health may cause such local inquiries to be held as he sees fit, and the costs incurred in relation to any such local inquiry, including the salary or remuneration of any inspector or officer of or person employed by the Minister engaged in the inquiry shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Minister may direct, and the Minister may certify the amount of the costs incurred and any such sum so certified and directed by him to be paid by any local authority or person shall be a debt to the Crown from such local authority or person. (2) Sections 293 to 296 and s. 298 of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Minister of Health or any local inquiry which

the Minister may cause to be held in pursuance of any part of this Act."

Under s. 293 of the Public Health Act, 1875, as applied, the Minister of Health may from time to time cause to be made such inquiries as are directed by Part II. of the Housing, Town Planning, etc. Act, 1909 (which relates to town planning) and such inquiries as he sees fit in relation to any matters with respect to which his sanction, approval, or consent is required thereunder. Section 294 enables the Minister to make orders as to the costs of inquiries and as to the parties by whom or the rates out of which such costs shall be borne. Every such order may be made a rule of Court on the application of any person named therein. The foregoing provisions, it will be observed, are similar to those contained in s. 85 (1) of the Housing of the Working Classes Act, 1890 ; but the provisions as to costs are couched in wider terms.

Under s. 298 of the Public Health Act, 1875, as applied, the reasonable costs of any local authority in respect of an inquiry, as sanctioned by the Minister of Health, are to be deemed to be expenses properly incurred for the purposes of Part II. of the Housing, Town Planning, etc. Act, 1909, by the local authority, and such costs are to be paid accordingly ; and, if thought expedient by the Minister of Health, the local authority may contract a loan for the purpose of defraying such costs. As to the fund liable for the payment of expenses, and as to loans, see Chap. X.

Powers of inspectors.—By s. 296 of the Public Health Act, 1875, as applied, inspectors for the purposes of any inquiry directed by the Minister of Health have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

Under s. 21 of the Poor Law Board Act, 1847, poor law inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws

relating to the relief of the poor, or for the purpose of producing and verifying on oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments (not being the property of any parish or union); and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter, upon oath; or, instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he is so examined.

As to false evidence given before the inspector, see the Perjury Act, 1911.

Reports of inspector.—It would seem that parties cannot claim the right to peruse the report of the inspector (*cf. Local Government Board* v. *Arlidge*, [1915] A. C. 120).

Effect of order of Minister of Health.—By s. 295 of the Public Health Act, 1875, as applied, an order made by the Minister of Health in pursuance of Part II. of the Housing, Town Planning, etc. Act, 1909, "shall be binding and conclusive in respect of the matters to which it refers," and shall be published in such manner as the Minister may direct. With respect to this provision in s. 295 of the Public Health Act, 1875, it was said by KEKEWICH, J., in a case in which it was contended that the section was conclusive as to the jurisdiction of the Local Government Board to make an order under s. 175 of the Public Health Act, 1875, directing land to be applied to purposes inconsistent with the purpose for which it was originally applied (*Attorney-General* v. *Hanwell Urban District Council*, [1900] 1 Ch. 51, at p. 56), that "It cannot be intended that an order of the Local Government Board made without jurisdiction is to be held conclusive in a court of justice. It must be the duty of the Court to inquire whether the order could properly be made. If it could properly be made, it would be conclusive under s. 295, though there might be some irregularities about it, and though perhaps it ought not to have been made." And *cf. Frewin* v. *Lewis* (1837), 9 Sim. 66; *Foster* v. *Dodd* (1866),

L. R. 1 Q. B. 475 ; (1867), L. R. 3 Q. B. 67 ; *Attorney-General* v. *Manchester* (*Bishop of*) (1867), L. R. 3 Eq. 436. And so a mere misdescription in an order has no binding force. For example, the mere calling a road "a street" would not make it one, if it was not in fact (*Fenwick* v. *Croydon Rural Sanitary Authority*, [1891] 2 Q. B. 216).

CHAPTER X.—EXPENSES OF LOCAL AUTHORITIES AND BORROWING POWERS.

1. Expenses.

Any expenses incurred by a local authority under Part II. of the Housing, Town Planning, etc. Act, 1909 (which relates to town planning), or any scheme made thereunder, are to be defrayed as expenses of the authority under the Public Health Acts (Housing, Town Planning, etc. Act, 1909, s. 65 (2)).

As to the expenses of local authorities under Part II. of the Housing, Town Planning, etc. Act, 1909, being borough councils or urban district councils, see ss. 207 to 228 of the Public Health Act, 1875 (Lumley's Public Health Acts, 9th edit. pp. 469–510).

As to the expenses of local authorities, being rural district councils, see ss. 229 to 232 of the Public Health Act, 1875 (Lumley's Public Health Acts, 9th edit. pp. 510–520). The expenses incurred in preparing and carrying out a scheme in a rural district will be "general expenses" chargeable on the whole district except so far as they may be made "special expenses" under s. 229 of the Public Health Act, 1875.

The expenses of the London County Council (the local authority for the administrative county of London) are defrayable out of the county rate (Housing, Town Planning, etc. Act, 1909, s. 66 (2)).

With respect to the expenses incurred in enforcing the observance of a scheme arising from the removal, pulling down or alteration of buildings or other works or from the execution of works, see Chap. V.

2. Borrowing Powers.

A local authority may borrow for the purposes of Part II. of the Housing, Town Planning, etc. Act, 1909 (which relates to town planning), or any scheme made thereunder, including the cost of the preparation or adoption of a scheme, in the same manner and subject to the same provisions as they may borrow for the purposes of the Public Health Acts (Housing, Town Planning, etc. Act, 1909, s. 65 (2); Housing, Town Planning, etc. Act, 1919, s. 48, Sched. III.).

With respect to the borrowing powers of borough councils and urban and rural district councils, for the purposes of the Public Health Acts, see ss. 233 to 243 of the Public Health Act, 1875 (Lumley's Public Health Acts, 9th edit. pp. 521–539). See also the Public Authorities and Bodies (Loans) Act, 1916, s. 1 (2) of which, relating to the issue of bearer bonds or other securities to bearer, is made a permanent enactment by s. 8 of the Housing (Additional Powers) Act, 1919.

Money borrowed for the purposes of Part II. of the Housing, Town Planning, etc. Act, 1909, or any scheme made thereunder, is not to be reckoned as part of the debt of a borough or urban district for the purposes of the limitation on borrowing under s. 234 (2) and (3) of the Public Health Act, 1875 (Housing, Town Planning, etc. Act, 1909, s. 65 (3)).

Under s. 234 of the Public Health Act, 1875, the exercise of the powers of borrowing conferred by the Act is subject (*inter alia*) to the following regulations: (2) the sum borrowed at any time may not exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and the Public Health Act, 1875, in the whole the assessable value for the two years of the premises assessable within the district in respect of which such money may be borrowed; (3) where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Minister of Health may not give his sanction to such loan until one of his inspectors has held a local inquiry and reported to the Minister. The removal of these limitations upon borrowing for the purposes of town

planning schemes does not of course affect the necessity of the local authority obtaining the sanction of the Minister of Health in respect of loans for such purposes.

Section 3 of the Housing, Town Planning, etc. Act, 1909, containing provisions as to loans by the Public Works Loan Commissioners for the purposes of the "Housing Acts," does not, as it appears, apply to loans for the purposes of town planning schemes, since the term "Housing Acts" does not comprise Part II. of the Act of 1909 (see pp. 84 to 86).

Money may be borrowed by the London County Council for town planning schemes in the same manner as money may be borrowed for general county purposes (Housing, Town Planning, etc. Act, 1909, s. 66 (2)).

CHAPTER XI.—COMPULSORY SUBMISSION OF SCHEMES PRIOR TO 1929.

The council of every borough or other urban district which contained on the first day of January, 1923, a population according to the last census for the time being of more than twenty thousand is required, within six years from that date, to prepare and submit to the Minister of Health a town planning scheme in respect of all land within the borough or urban district in respect of which a town planning scheme may be made under the Act of 1909 (Housing, Town Planning, etc. Act, 1919, s. 46 (1); Housing, etc. Act, 1923, s. 19).

A town planning scheme may be made "as respects any land which is in course of development or appears likely to be used for building purposes" (Housing, Town Planning, etc. Act, 1909, s. 54 (1)). With respect to the meaning of this expression, see pp. 4 and 5. The Minister of Health is the final arbiter as to "whether land is likely to be used for building purposes or not" (*ibid.* s. 54 (7), see p. 153); so that, as regards such land, there should be no difficulty, with the assistance of the Minister of Health, in determining what a scheme under the above provision should comprise. What land is "in course of development for building purposes" appears to be a matter of fact not within the province of the Minister to determine; and for the purposes of a scheme under the above provision it will presumably be generally left to the borough or urban district council concerned to decide what land of that character is within their area. See also s. 21 of the Housing, etc. Act, 1923 (p. 175), as to the making of schemes in localities of special architectural, historic, or artistic interest.

Regulations.—Without prejudice to the powers of the council under the Act of 1909, every scheme required to be prepared

and submitted under s. 46 (1) of the Act of 1919 must deal with such matters as may be determined by regulations to be made by the Minister of Health (Housing, Town Planning, etc. Act, 1919, s. 46 (2)). Every regulation so made is to be laid before both Houses of Parliament as soon as may be after it is made, and, if an address is presented by either House within 21 days on which that House has sat next after any such regulation is laid before it praying that the regulation may be annulled, His Majesty in Council may annul the regulation, but without prejudice to the validity of anything previously done thereunder (*ibid.* s. 46 (3)).

Scope of s. 46 *of the Housing, Town Planning, etc. Act,* 1919.—Section 46 of the Act of 1919, it will be seen, casts a statutory duty upon the councils of boroughs and of the urban districts to which it relates to prepare and submit schemes to the Minister of Health before the 1st January, 1929. Such schemes are to "deal with such matters as may be determined by regulations to be made by the Minister of Health"; and, in order that councils affected may perform their duty within the prescribed time, it will presumably not be long before such regulations are made. And it may be supposed that these or other regulations will indicate the procedure to be adopted in the preparation of these compulsory schemes, since the Ministry of Health (Town Planning) Regulations, 1921—dealing, as they do, with schemes which arise from the voluntary resolutions of local authorities—do not seem to be entirely applicable.

The words "without prejudice to the powers of the council under the Act of 1909," standing at the beginning of s. 46 (2) of the Act of 1919, would appear to indicate that these compulsory schemes need not be confined to the matters to be determined by the regulations to be made under that sub-section, but may embrace all matters which the Act of 1909 allows to be dealt with in town planning schemes.

Section 46 of the Act of 1909 only deals in terms with the "preparation and submission" of schemes. But it may be supposed that, upon their submission, the provisions of s. 54 of the Act of 1909 (as amended by the Act of 1919)—see pp. 152 and 153—will apply to them; so that the Minister of Health

may approve them, with the result that the schemes will have statutory effect.

It will be remembered that, in addition to the compulsory provisions of s. 46 of the Act of 1919, the Minister of Health may in a proper case require a local authority to prepare and submit for his approval a town planning scheme under s. 47 of the same Act (see p. 171). The Minister has similar powers under s. 61 (1) of the Act of 1909 (see p. 158). Under sub-s. (2) of the same section the Minister may order the responsible authority to enforce effectively the observance of a scheme and to execute such works as the authority is required to execute under the scheme.

CHAPTER XII.—APPLICATION OF TOWN PLANNING ACTS TO SCOTLAND.

Reference is here made to the statutory provisions relating to town planning which apply to Scotland both for the convenience of the readers of this work who are concerned with the laws of that country and for the advantage of English readers who will the more easily be enabled to appreciate the effect of any decisions with regard to town planning legislation which may arise in the Scottish Courts.

Part II. of the Housing, Town Planning, etc. Act, 1909, applies to Scotland subject to the modifications set out in s. 67 of the Act (see p. 160). The Housing, Town Planning, etc. Act, 1919, does not extend to Scotland (see s. 51, p. 172); but Part II. of the Housing, Town Planning, etc. (Scotland) Act, 1919, contains provisions of a similar character to those contained in Part II. of the English Act. The Housing, etc. Act, 1923, is applied to Scotland with suitable modifications (s. 23). Part II. of the Housing, Town Planning, etc. Act, 1909 (as applied to Scotland), Part II. of the Housing, Town Planning, etc. (Scotland), Act, 1919, and Part II. of the Housing, etc. Act, 1923, as applied to Scotland are cited as the Town Planning, etc. (Scotland) Acts, 1909 to 1923.

The only modification contained in s. 67 of the Housing, Town Planning, etc. Act, 1909, which appears to introduce a substantial variation in the provisions of Part II. of that Act as they relate to England, is to be found in sub-s. (6) of s. 67. Sub-section (6) contains a modification as regards s. 61 (see p. 58). That section empowers the Local Government Board (now the Minister of Health) to order, in case of default, a local authority to prepare or adopt a scheme, or to consent to modi-

fications in a scheme, or a responsible authority to enforce the observance of a scheme or execute works thereunder, as the case may be. The Scottish Board of Health may not themselves make an order under s. 61 on any authority, but in lieu thereof, s. 67 (6) enacted that "it shall be lawful for the Board, after holding a local inquiry at which the authority shall have had an opportunity of being heard, and with the approval of the Lord Advocate, to apply for such an order by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses of the proceedings as to the said Division or Lord Ordinary shall appear to be just." This variation between English and Scottish procedure is not perhaps now of so much consequence, since s. 33 of the Housing, Town Planning, etc. (Scotland) Act, 1919 (which corresponds to s. 47 of the Housing, Town Planning, etc. Act, 1919, see p. 171), in dealing with the default of the local authority in respect of similar matters to those referred to in s. 61 of the Act of 1909, empowers the Scottish Board of Health to make an order upon the local authority without the intervention of the Courts—as the Minister of Health may do in England. It may be observed that s. 33 of the Housing, Town Planning, etc. (Scotland) Act, 1919 is in the same terms as s. 47 of the Housing, Town Planning, etc. Act, 1919, with the exception that the Scottish Board of Health is alone empowered to act in case of default, there being no provision corresponding to that in the English Act enabling the county council to act.

With respect to the provisions in Part II of the Housing, Town Planning, etc. (Scotland) Act, 1919, generally they are in substance the same as those in Part II of the English Act. Section 32 of the Scottish Act—directing the councils of burghs having populations over 20,000 and other local authorities, if required by the Scottish Board of Health, to submit schemes within three years after 1st January, 1923, with reference to any land in regard to which town planning schemes might be made under the Act of 1909—corresponds to s. 46 of the English Act (see p. 170). That period is now extended to six years

by s. 18 of the Housing, etc. Act, 1923—see p. 174. Section 34 of the Scottish Act of 1919—dealing with resolutions to prepare or adopt schemes—follows s. 42 of the English Act, but with the addition that a local authority is forthwith to notify such a resolution to the Scottish Board of Health. Sections 35, 36, and 37 of the Scottish Act are in similar terms to ss. 43, 44, and 45 of the English Act respectively (see pp. 169 and 170). Section 38 and Sched. III. of the Housing, Town Planning, etc. (Scotland) Act, 1919, making certain consequential and minor amendments in the Act of 1909, correspond to s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919. One of these amendments is of particular interest. It relates to the payment of compensation in respect of property injuriously affected by town planning schemes and is as follows :—

Section 58 (1). After the words "town planning scheme" there shall be inserted the words "or by the carrying into effect of any provision of a town planning scheme."

This amendment is referred to at p. 107.

Acquisition of land.—The provisions of Sched. I. of the Housing, Town Planning, etc. Act, 1909, relating to the compulsory acquisition of land (except those relating to land belonging to an ecclesiastical benefice) were made applicable to Scotland, by paragraph (14) of the Schedule (see p. 165). Sections 10 and 51, and Schedule IV. of the Housing, Town Planning, etc. (Scotland) Act, 1919, make similar amendments to Sched. I. of the Act of 1909 to those appearing in s. 11 of the Housing, Town Planning, etc. Act, 1919 (see p. 167).

The Acquisition of Land (Assessment of Compensation) Act, 1919, applies to Scotland subject to the modifications specified in s. 11 (1) of that Act.

The Housing (Additional Powers) Act, 1919, is applied to Scotland subject to certain modifications (see s. 13 (1)).

APPENDICES.

APPENDIX A.

STATUTES.

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Housing of the Working Classes Act, 1890, ss. 1, 53 (1), 57 (1), 85	149
Housing, Town Planning, etc. Act, 1909, ss. 2, 5, 45, 47, 54–67, 73, 74, 76, Scheds. I., IV., and V.	151
Housing, Town Planning, etc. Act, 1919, ss. 11, 40, 42–48, 51, 52 (1), (3), Sched. III.	167
Housing, etc. Act, 1923, ss. 16, 18, 19, 20, 21, 23, 25 . .	174

HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 & 54 Vict. c. 70.)

An Act to consolidate and amend the Acts relating to Artisans' and Labourers' Dwellings and the Housing of the Working Classes.

1. *Short title of Act.*—This Act may be cited as the Housing of the Working Classes Act, 1890.

PART III.

Working Class Lodging Houses.

53. *Definition of lodging-houses for the working classes.*—(1) The expression "lodging-houses for the working classes" when used in this part of this Act shall include separate houses or cottages for the working classes, whether containing one or several tenements, and the purposes of this part of this Act shall include the provision of such houses and cottages.

57. *Acquisition of land.*—(1) Land for the purposes of this part of this Act may be acquired by a local authority in like manner as

if those purposes were purposes of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and sections 175 to 178, both inclusive, of that Act (relating to the purchase of lands) shall apply accordingly, and shall for the purposes of this part of this Act extend to London in like manner as if the Commissioners of Sewers (*a*) and the London County Council (*b*) respectively were a local authority in the said sections mentioned *and a Secretary of State were substituted for the Local Government Board* (*c*).

(*a*) Now the Common Council of the City of London (City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii)).

(*b*) By s. 41 of the Housing, Town Planning, etc. Act, 1919, the council of a metropolitan borough for the purposes of Part III. of the Housing of the Working Classes Act, 1890, is the local authority for the borough, subject to the provisions of that section.

(*c*) The words in italics were repealed by the Statute Law Revision Act, 1908, the powers and duties of the Secretary of State having been assigned to the Local Government Board by an Order in Council made under s. 2 of the Housing of the Working Classes Act, 1903.

PART IV.

Supplemental.

85. *Local Inquiries.*—(1) For the purposes of the execution of their duties (*a*) under this Act the Local Government Board (*b*) may cause such local inquiries to be held as the Board (*b*) see fit, and the costs incurred in relation to any such local inquiry, and to any local inquiry which any other confirming authority holds or causes to be held, including the salary or remuneration of any inspector or officer of or person employed by the Board (*b*) or confirming authority engaged in the inquiry *not exceeding three guineas a day* (*c*), shall be paid by the local authorities and persons concerned in the inquiry, or by such of them and in such proportions as the Board (*b*) or confirming authority may direct, and that Board (*b*) or authority may certify the amount of the costs incurred, and any sum so certified and directed by that Board (*b*) or authority to be paid by any local authority or person shall be a debt to the Crown from such local authority or person.

(2) Sections 293 to 296 and section 298 of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Local Government Board (*b*) or any local inquiry which that Board (*b*) cause to be held in pursuance of any part of this Act.

(*a*) Before the word "duties" read "powers and" (Housing, Town Planning, etc. Act, 1909, s. 46 and Sched. II.).

(*b*) The powers and duties of the Local Government Board were transferred to the Minister of Health by the Ministry of Health Act, 1919.

(*c*) The words in italics were repealed by the Housing, Town Planning, etc. Act, 1909, s. 75 and Sched. VI.

HOUSING, TOWN PLANNING, ETC. ACT, 1909.

(9 Edw. 7, c. 44.)

An Act to amend the Law relating to the Housing of the Working Classes, to provide for the making of Town Planning schemes, and to make further provision with respect to the appointment and duties of County Medical Officers of Health, and to provide for the establishment of Public Health and Housing Committees of County Councils.

PART I.

Housing of the Working Classes.

Facilities for Acquisition of Lands and other Purposes of the Housing Acts.

2. *Provisions as to acquisition of land under Part III. of the principal Act.*—(1) A local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the principal Act (*a*), by means of an order submitted to the Local Government Board (*b*) and confirmed by the Board (*b*) in accordance with the First Schedule to this Act.

(2) The procedure under this section for the compulsory purchase of land shall be substituted for the procedure for the same purpose under section one hundred and seventy-six of the Public Health Act, 1875 (38 & 39 Vict. c. 55), as applied by sub-section (1) of section fifty-seven of the principal Act (*a*).

(3) A local authority may, with the consent of and subject to any conditions imposed by the Local Government Board (*b*), acquire land by agreement for the purposes of Part III. of the principal Act, notwithstanding that the land is not immediately required for those purposes.

(*a*) The "principal Act" is the Housing of the Working Classes Act, 1890 (s. 1).
(*b*) Now the Minister of Health.

5. *Payment of purchase or compensation money (which would otherwise be paid into court) on direction of Local Government Board* (*a*). —(1) Any purchase money or compensation payable in pursuance of the Housing Acts (*b*) by a local authority in respect of any lands, estate, or interest of another local authority which would, but for this section, be paid into court in manner provided by the Lands Clauses Acts or by paragraph (20) of the Second Schedule to the principal Act may, if the Local Government Board (*a*) consent, instead of being paid into court, be paid and applied as the Board (*a*) determine.

(2) Any such decision of the Board (*a*) as to the payment and

application of any such purchase money or compensation shall be final and conclusive.

(*a*) Now the Minister of Health.

(*b*) The "Housing Acts" means "the Housing of the Working Classes Act, 1890, and any Act amending that Act including this Act" (s. 51).

45. *Saving of sites of ancient monuments, etc.*—Nothing in the Housing Acts (*a*) shall authorise the acquisition for the purposes of those Acts of any land which is the site of an ancient monument or other object of archæological interest, or the compulsory acquisition for the purposes of Part III. of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), of any land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or which at the date of the order forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house.

(*a*) The "Housing Acts" means "the Housing of the Working Classes Act, 1890, and any Act amending that Act including this Act" (s. 51).

47. *Provisions of this Part to be deemed to be part of the appropriate Part of the Principal Act.*—(1) Any provisions of this Act which supersede or amend any provisions of the principal Act (*a*) shall be deemed to be part of that Part of the principal Act (*a*) in which the provisions superseded or amended are contained.

(*a*) The principal Act is the Housing of the Working Classes Act, 1890 (s. 1).

PART II.

Town Planning.

54. *Preparation and approval of town planning scheme.*—(1) A town planning scheme may be made in accordance with the provisions of this Part of this Act as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connection with the laying out and use of the land, and of any neighbouring lands (*a*).

(2) *The Local Government Board may authorise a local authority within the meaning of this Part of this Act to prepare such a town planning scheme with reference to any land within or in the neighbourhood of their area, if the authority satisfy the Board that there is a primâ facie case for making such a scheme, or may authorise a local authority to adopt, with or without any modifications, any such scheme proposed by all or any of the owners of any land with respect to which the local authority might themselves have been authorised to prepare a scheme* (*b*).

(3) *Where it is made to appear to the Local Government Board that a piece of land already built upon, or a piece of land not likely to be used for building purposes, is so situated with respect to any land likely to be used for building purposes that it ought to be included in any town planning scheme made with respect to the last-mentioned land, the Board may authorise the preparation or adoption of a scheme including such piece of land as aforesaid, and providing for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect* (*c*).

(4) A town planning scheme prepared or adopted by a local authority shall not have effect, unless it is approved by order of the Local Government Board (*d*), and the Board (*d*) may refuse to approve any scheme except with such modifications and subject to such conditions as they think fit to impose :

Provided that, before a town planning scheme is approved by the Local Government Board, notice of their intention to do so shall be published in the London or Edinburgh Gazette, as the case may be, and, if within twenty-one days from the date of such publication any person or authority interested objects in the prescribed manner, the draft of the order shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and, if either of those Houses before the expiration of those thirty days presents an address to His Majesty against the draft, or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft scheme (*e*).

(5) A town planning scheme, when approved by the Local Government Board (*d*), shall have effect as if it were enacted in this Act.

(6) A town planning scheme may be varied or revoked by a subsequent scheme prepared or adopted and approved in accordance with this Part of this Act, and the Local Government Board (*d*), on the application of the responsible authority, or of any other person appearing to them to be interested, may by order revoke a town planning scheme if they think that under the special circumstances of the case the scheme should be so revoked.

(7) The expression " land likely to be used for building purposes " shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not, and the decision of the Local Government Board (*d*), whether land is likely to be used for building purposes or not, shall be final.

(*a*) A proviso is added to this sub-section by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919.

(*b*) For this sub-section another was substituted by s. 42 of the Housing, Town Planning, etc. Act, 1919.

(*c*) This sub-section was repealed by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919.

(*d*) Now the Minister of Health.

(*e*) This proviso was repealed by s. 44 of the Housing, Town Planning, etc, Act, 1919.

55. *Contents of town planning schemes.*—(1) The Local Government Board (*a*) may prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the Fourth Schedule to this Act and the general provisions, or set of general provisions appropriate to the area for which a town planning scheme is made, shall take effect as part of every scheme, except so far as provision is made by the scheme as approved by the Board (*a*) for the variation or exclusion of any of those provisions.

(2) Special provisions shall in addition be inserted in every town planning scheme defining in such manner as may be prescribed by regulations under this Part of this Act the area to which the scheme is to apply, and the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority (in this Part of this Act referred to as the responsible authority), and providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions, and for suspending, so far as necessary for the proper carrying out of the scheme, any statutory enactments, bye-laws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme :

Provided that, where the scheme contains provisions suspending any enactment contained in a public general Act, the scheme shall not come into force unless a draft thereof has been laid before each House of Parliament for a period of not less than forty days during the session of Parliament, and, if either of those Houses before the expiration of those forty days presents an Address to His Majesty against the proposed suspension no further proceedings shall be taken on the draft, without prejudice to the making of any new scheme (*b*).

(3) Where land included in a town planning scheme is in the area of more than one local authority, or is in the area of a local authority by whom the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority and for certain purposes

another local authority, or a joint body constituted specially for the purpose by the scheme, and all necessary provisions may be made by the scheme for constituting the joint body and giving them the necessary powers and duties:

Provided that, except with the consent of the London County Council, no other local authority shall, as respects any land in the county of London, prepare or be responsible for enforcing the observance of a town planning scheme under this Part of this Act, or for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority.

(*a*) Now the Minister of Health.

(*b*) This proviso was repealed by s. 44 of the Housing, Town Planning, etc. Act, 1919.

56. *Procedure regulations of the Local Government Board* (*a*).—(1) The Local Government Board (*a*) may make regulations for regulating generally the procedure to be adopted with respect to applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme, obtaining the approval of the Board (*a*) to a scheme so prepared or adopted, and any inquiries, reports, notices, or other matters required in connection with the preparation or adoption or the approval of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof (*b*).

(2) Provision shall be made by those regulations—

(*a*) for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme at every stage of the proceedings, by means of conferences and such other means as may be provided by the regulations (*c*);

(*b*) for securing that notice of the proposal to prepare or adopt the scheme should be given at the earliest stage possible to any council interested in the land; and

(*c*) for dealing with the other matters mentioned in the Fifth Schedule to this Act (*d*).

(*a*) Now the Minister of Health.

(*b*) By s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919, for the words "applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme" there were substituted the words "the preparation or adoption of a town planning scheme," and after the word "adopted" there were inserted the words "the variation or revocation of a scheme," and after the words "the provisions thereof" there were inserted the words "or the variation or revocation of the scheme."

(*c*) By s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919, for the words "at every stage of the proceedings, by means of conferences and such other means" were substituted the words "by such means."

(*d*) An additional paragraph is added to this sub-section by s. 43 (2) of the Housing, Town Planning, etc. Act, 1919.

57. *Power to enforce scheme.*—(1) The responsible authority may at any time, after giving such notice as may be provided by a town planning scheme and in accordance with the provisions of the scheme—

(*a*) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with ; or

(*b*) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by a responsible authority under this section may be recovered from the persons in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, that question shall be referred to the Local Government Board (*a*), and shall, unless the parties otherwise agree, be determined by the Board (*a*) as arbitrators, and the decision of the Board (*a*) shall be final and conclusive and binding on all persons.

(*a*) Now the Minister of Health.

58. *Compensation in respect of property injuriously affected by scheme, etc.*—(1) Any person whose property is injuriously affected by the making of a town planning scheme shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less that three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the Local Government Board (*a*), be entitled to obtain compensation in respect thereof from the responsible authority.

(2) A person shall not be entitled to obtain compensation under this section on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme, after the time at which the application for authority to prepare the scheme was made, or after such other time as the Local Government Board (*a*) may fix for the purpose :

Provided that this provision shall not apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before the application was made (*b*).

(3) Where, by the making of any town planning scheme, any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the approval of the scheme is first published in the manner prescribed by regulations made by the Local Government Board (*a*)), shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase.

(4) Any question as to whether any property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this section or which the responsible authority are entitled to recover from a person whose property is increased in value, shall be determined by *the arbitration of a single arbitrator appointed by the Local Government Board* (*c*), unless the parties agree on some other method of determination.

(5) Any amount due under this section as compensation to a person aggrieved from a responsible authority, or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt.

(6) Where a town planning scheme is revoked by an order of the Local Government Board (*a*) under this Act, any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation in accordance with this section in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme.

(*a*) Now the Minister of Health.

(*b*) In this sub-section by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919, for the words "time at which the application for authority to prepare the scheme was made" were substituted the words "date of the resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect as the case may be," and for the words "the application was made" were substituted the words "such date or other time as aforesaid."

See also the provisions of s. 45 of the Housing, Town Planning, etc. Act, 1919.

(*c*) See now s. 18 of the Housing, etc. Act, 1923, p. 174.

59. *Exclusion or limitation of compensation in certain cases.*— (1) Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be paid in respect thereof if or so far as the provisions are such as would have been enforceable if they had been contained in bye-laws made by the local authority (*a*).

(2) Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which, *with a view to securing the amenity of the area included in the scheme or any part thereof* (*b*), prescribe the space about buildings

or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board (*c*), having regard to the nature and situation of the land affected by the provisions, consider reasonable for the purpose.

(3) Where a person is entitled to compensation under this Part of this Act in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and under that other enactment, and shall not be entitled to any greater compensation under this Act than he would be entitled to under the other enactment.

(*a*) Amended by s. 16 and Sched. II. of Housing, etc. Act, 1923—pp. 174, 175.

(*b*) The words in italics were repealed by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919.

(*c*) Now the Minister of Health.

60. *Acquisition by local authorities of land comprised in a scheme.*—(1) The responsible authority may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be authorised to purchase any such land compulsorily in the same manner and subject to the same provisions (including any provision authorising the Local Government Board (*a*) to give directions as to the payment and application of any purchase money or compensation) as a local authority may purchase or be authorised to purchase land situate in an urban district for the purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by sections two and forty-five of this Act.

(2) Where land included within the area of a local authority is comprised in a town planning scheme, and the local authority are not the responsible authority, the local authority may purchase or be authorised to purchase that land in the same manner as the responsible authority.

(*a*) Now the Minister of Health.

61. *Powers of Local Government Board* (*a*) *in case of default of local authority to make or execute town planning scheme.*—(1) If the Local Government Board (*a*) are satisfied on any representation, after holding a public local inquiry, that a local authority—

(*a*) have failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a town planning scheme ought to be made; or

(*b*) have failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted; or

(*c*) have unreasonably refused to consent to any modifications or conditions imposed by the Board (*a*);

the Board (*a*) may, as the case requires, order the local authority to prepare and submit for the approval of the Board (*a*) such a town planning scheme, or to adopt the scheme, or to consent to the modifications or conditions so inserted :

Provided that, where the representation is that a local authority have failed to adopt a scheme, the Local Government Board (*a*), in lieu of making such an order as aforesaid, may approve the proposed scheme, subject to such modifications or conditions, if any, as the Board (*a*) think fit, and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the Board (*a*).

(2) If the Local Government Board (*a*) are satisfied on any representation, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed, or any provisions thereof, or to execute any works which under the scheme or this Part of this Act the authority is required to execute, the Board (*a*) may order that authority to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, or for executing any works which under the scheme or this Part of this Act the authority is required to execute.

(3) Any order under this section may be enforced by mandamus (*b*).

(*a*) Now the Minister of Health.

(*b*) See also the provisions of s. 47 of the Housing, Town Planning, etc. Act, 1919.

62. *Determination of matters by Local Government Board* (*a*).—Where the Local Government Board (*a*) are authorised by this Part of this Act or any scheme made thereunder to determine any matter, it shall, except as otherwise expressly provided by this Part of this Act, be at their option to determine the matter as arbitrators or otherwise, and, if they elect or are required to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board (*a*) and the determination of the matters aforesaid.

(*a*) Now the Minister of Health.

63. *Inquiries by Local Government Board* (*a*).—Section eighty-five of the Housing of the Working Classes Act, 1890 (which relates to inquiries by the Local Government Board (*a*)), as amended by this Act, shall apply for any purposes of this Part of this Act as it applies

for the purpose of the execution of the powers and duties of the Local Government Board (*a*) under that Act.

(*a*) Now the Minister of Health.

64. *Laying general provisions before Parliament.*—All general provisions made under this Part of this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893 (56 & 57 Vict. c. 66), shall apply to such provisions as if they were statutory rules within the meaning of section one of that Act.

65. *Definition of local authority, and expenses.*—(1) For the purposes of this Part of this Act the expression "local authority" means the council of any borough or urban or rural district.

(2) Any expenses incurred by a local authority under this Part of this Act, or any scheme made thereunder, shall be defrayed as expenses of the authority under the Public Health Acts, and the authority may borrow, for the purposes of this Part of this Act, or any scheme made thereunder (*a*), in the same manner and subject to the same provisions as they may borrow for the purposes of the Public Health Acts.

(3) Money borrowed for the purposes of this Part of this Act, or any scheme made thereunder, shall not be reckoned as part of the debt of a borough or urban district for the purposes of the limitation on borrowing under sub-sections (2) and (3) of section two hundred and thirty-four of the Public Health Act, 1875.

(*a*) By s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919, there were here inserted the words "including the cost of the preparation or adoption of a scheme."

66. *Application to London.*—(1) This Part of this Act shall apply to the administrative county of London, and, as respects that county, the London County Council shall be the local authority

(2) Any expenses incurred by the London County Council shall be defrayed out of the general county rate and any money may be borrowed by the Council in the same manner as money may be borrowed for general county purposes.

67. *Application of Part II. to Scotland.*—This Part of this Act shall apply to Scotland subject to the following modifications :—

(1) The Local Government Board for Scotland (*a*) (hereinafter referred to as the Board) shall be substituted for the Local Government Board, and shall for the purposes of this Part of this Act have the same powers of local inquiry as for the purposes of the Housing Acts as defined in Part I. of this Act.

(2) Sub-section (1) and sub-section (3) of the section of this Part of this Act which relates to the definition of local authority and expenses shall not apply.

(3) The local authority and the area of such authority for the purposes of this Part of this Act shall respectively be the local authority for the purposes of the Housing Acts as defined in Part I. of this Act, and the district of that authority.

(4) References to the Public Health Acts shall be construed as references to the Housing Acts as defined in Part I. of this Act.

(5) Any local rate for the purposes of this Part of this Act (including the purposes of any loan) shall not be reckoned in any calculation as to the statutory limit of the public health general assessment.

(6) The Board shall not themselves make an order under section sixty-one of this Act on any authority, but in lieu thereof it shall be lawful for the Board, after holding a local inquiry at which the authority shall have had an opportunity of being heard, and with the approval of the Lord Advocate, to apply for such an order by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the expenses of the proceedings as to the said Division or Lord Ordinary shall appear to be just.

(7) In any proceedings under this Part of this Act the Board shall have regard to the powers and jurisdiction of the dean of guild court in burghs.

(8) The provision respecting the Rules Publication Act, 1893, shall have effect as if section one of that Act applied to Scotland, with the substitution of the "Edinburgh Gazette" for the "London Gazette" (*b*).

(*a*) Now the Scottish Board of Health.

(*b*) As to the amendment of the above provisions as so applied to Scotland by the Housing Town Planning, etc. (Scotland) Act, 1919, see Chap. XII. pp. 145 to 147.

PART IV.

Supplemental.

73. *Provisions as to commons and open spaces.*—(1) Where any scheme or order under the Housing Acts or Part II. of this Act authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment, the

scheme or order, so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the Local Government Board (*a*) after consultation with the Board of Agriculture and Fisheries (*b*) to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

(2) Before giving any such certificate the Board (*a*) shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorises such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

(*a*) Now the Minister of Health.
(*b*) Now the Minister of Agriculture and Fisheries.

74. *Provisions as to land in neighbourhood of royal palaces or parks.*—(1) Where any land proposed to be included in any scheme or order to be made under the Housing Acts or Part II. of this Act, or any land proposed to be acquired under the Housing Acts or Part II. of this Act, is situate within the prescribed distance from any of the royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the Local Government Board (*a*) shall, before confirming the scheme or order or authorising the acquisition of the land or the raising of any loan for the purpose, take into consideration any recommendations they may have received from the Commissioners of Works with reference to the proposal.

(2) For the purposes of this section "prescribed" means prescribed by regulations made by the Local Government Board (*a*) after consultation with the Commissioners of Works.

(*a*) Now the Minister of Health.

76. *Short title and extent.*—(1) This Act may be cited as the Housing, Town Planning, etc. Act, 1909, and Part I. of this Act shall be construed as one with the Housing of the Working Classes Acts, 1890 to 1903, and that Part of this Act and those Acts may be cited together as the Housing of the Working Classes Acts, 1890 to 1909.

(2) This Act shall not extend to Ireland.

FIRST SCHEDULE.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A LOCAL AUTHORITY FOR THE PURPOSES OF PART III. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890.

Section 2.

(1) Where a local authority propose to purchase land compulsorily under this Act, the local authority may submit to the Board (*a*) an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) An order under this schedule shall be of no force unless and until it is confirmed by the Board (*a*), and the Board (*a*) may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this schedule, become final and have effect as if enacted in this Act; and the confirmation by the Board (*a*) shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(3) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory.

(4) The order shall be in the prescribed form, and shall contain such provisions as the Board (*a*) may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18)) and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board (*a*), who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly (*b*).

(5) The order shall be published by the local authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed.

(6) If within the prescribed period no objection to the order has been presented to the Board (*a*) by a person interested in the land, or if every such objection has been withdrawn, the Board (*a*) shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board (*a*) shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry (*c*).

(7) *Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of adjoining land, and such person shall in England have for the purpose of the inquiry all the powers of an inspector of the Local Government Board, and, if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that owing to its extent or situation or the purpose for which it is used it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the conditions specified in his report, then, if the Local Government Board confirm the order in respect of that land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament.*

Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat (*d*).

(8) The arbitrator shall, so far as practicable, in assessing compensation, act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised to appear, and shall hear witnesses, but shall not, except in such cases as the Board (*a*) otherwise direct, hear counsel or expert witnesses (*e*).

(9) The Board (*a*) may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily (*f*).

(10) The remuneration of an arbitrator appointed under this schedule shall be fixed by the Board (*g*).

(11) In construing for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

(12) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(13) In this schedule the expression "Board" means the Local Government Board (*a*), and the expression "prescribed" means prescribed by the Board (*a*).

(14) The provisions of this schedule, except those relating to land belonging to an ecclesiastical benefice, shall apply to Scotland, subject to the following modifications:—

(*a*) for the reference to section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845, there shall be substituted a reference to section one hundred and twenty of the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), and for the reference to sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, there shall be substituted a reference to sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33);

(*b*) for references to an arbitrator there shall be substituted references to an arbiter;

(*c*) for the references to the Lord Chancellor there shall be substituted a reference to the Lord Advocate;

(*d*) for the reference to the Local Government Board there shall be substituted a reference to the Local Government Board for Scotland, and for the reference to a borough or urban district there shall be substituted a reference to a burgh (*h*).

(*a*) Now the Minister of Health.

(*b*) The arbitrator will now be an official arbitrator appointed under s. 1 of the Acquisition of Land (Assessment of Compensation) Act, 1919.

(*c*) See s. 11 (2), (3), (4) of the Housing, Town Planning, etc. Act, 1919.

(*d*) This paragraph is repealed by s. 11 (1) of the Housing, Town Planning, etc. Act, 1919, and also by s. 50 and Sched. V. of that Act—but subject to s. 11 (4) of that Act.

(*e*) As respects expert witnesses, the arbitrator is required by s. 3 (1) of the Acquisition of Land (Assessment of Compensation) Act, 1919, to hear one on either side; and one other on either side where the claim includes a claim for compensation in respect of minerals or disturbance of business as well as in respect of land (see p. 77). He is empowered to hear more.

(*f*) With respect to costs, see also now the provisions of s. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919.

(*g*) Official arbitrators, who will now act, are remunerated under s. 1 (4) of the Acquisition of Land (Assessment of Compensation) Act, 1919.

(*h*) For the Local Government Board for Scotland now read the Scottish Board of Health. The words "and for the reference to a borough or urban district there shall be substituted a reference to a burgh" at the end of paragraph (14) (*d*) were repealed by s. 51 and Sched. IV. of the Housing, Town Planning, etc. (Scotland) Act, 1919. The above notes relating to various

amendments in Sched. I. of the Housing, Town Planning, etc. Act, 1909, as that Act relates to England are made also as regards Scotland by ss. 10 and 51 and Sched. IV. of the Housing, Town Planning, etc. (Scotland) Act, 1919, and the Acquisition of Land (Assessment of Compensation) Act, 1919.

FOURTH SCHEDULE.

Matters to be dealt with by General Provisions prescribed by the Local Government Board (*a*).

Section 55.

1. Streets, roads, and other ways, and stopping up, or diversion of existing highways.
2. Buildings, structures, and erections.
3. Open spaces, private and public.
4. The preservation of objects of historical interest or natural beauty.
5. Sewerage, drainage, and sewage disposal.
6. Lighting.
7. Water supply.
8. Ancillary or consequential works.
9. Extinction or variation of private rights of way and other easements.
10. Dealing with or disposal of land acquired by the responsible authority or by a local authority.
11. Power of entry and inspection.
12. Power of the responsible authority to remove, alter, or demolish any obstructive work.
13. Power of the responsible authority to make agreements with owners, and of owners to make agreements with one another.
14. Power of the responsible authority or a local authority to accept any money or property for the furtherance of the objects of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42).
15. Application with the necessary modifications and adaptations of statutory enactments.
16. Carrying out and supplementing the provisions of this Act for enforcing schemes.
17. Limitation of time for operation of scheme.
18. Co-operation of the responsible authority with the owners of land included in the scheme or other persons interested *by means of conferences, etc.* (*b*).
19. Charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase, and for that purpose applying, with the necessary adaptations, the provisions of any enactments dealing with charges for improvements of land.

(*a*) Now the Minister of Health.

(*b*) The words in italics were repealed by s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919.

FIFTH SCHEDULE.

Section 56.

1. Procedure anterior to and for the purpose of an application for authority to prepare or adopt a scheme :—

(*a*) Submission of plans and estimates.

(*b*) Publications of notices (*a*).

2. Procedure during, on, and after the preparation or adoption and before the approval of the scheme :—

(*a*) Submission to the Local Government Board (*b*) of the proposed scheme, with plans and estimates.

(*b*) Notice of submission of proposed scheme to the Local Government Board (*b*).

(*c*) Hearing of objections and representations by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme.

(*d*) Publication of notice of intention to approve scheme and the lodging of objections thereto.

3. Procedure after the approval of the scheme :—

(*a*) Notice to be given of approval of scheme.

(*b*) Inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme.

4. Duty, at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme.

5. The details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.

(*a*) By s. 48 and Sched. III. of the Housing, Town Planning, etc. Act, 1919, for the words " and for the purpose of an application for authority to prepare or adopt " there were substituted the words " the preparation or adoption of," and for the words " Submission of plans and estimates " there were substituted the words " Preparation and deposit of plans."

(*b*) Now the Minister of Health.

HOUSING, TOWN PLANNING, ETC. ACT, 1919.

(9 & 10 Geo. 5, c. 35.)

An Act to amend the enactments relating to the Housing of the Working Classes, Town Planning, and the acquisition of small dwellings.

PART I.

Housing of the Working Classes.

11. *Amendment of procedure for compulsory acquisition of land.*— (1) Paragraph (7) of the First Schedule to the Housing, Town

Planning, etc. Act, 1909 (which provides for special procedure in the case of the acquisition of land, for the purposes of Part III. of the principal Act (*a*), situate in London or in a borough or urban district), shall cease to have effect.

(2) Where the confirming of an order made under that schedule is opposed, the Local Government Board (*b*) shall, before confirming the order, duly consider the report of the person by whom, under paragraph (6) of the said schedule, a public inquiry is held, and the Local Government Board (*b*) shall not confirm any order for the compulsory acquisition of land under that schedule, even when the order is unopposed, if they are of opinion that the land is unsuited for the purpose for which it is proposed to be acquired.

(4) The amendments to the said schedule effected by this Act shall apply to that schedule as originally enacted but not as applied by any other enactment.

(*a*) The Housing of the Working Classes Act, 1890.
(*b*) Now the Minister of Health.

Miscellaneous.

40. *Construction.*—This Part of this Act shall be construed as one with the principal Act (*a*), and any provisions of this Part of this Act which supersede or amend any provisions of the principal Act (*a*) shall be deemed to be part of that Part of the principal Act (*a*) in which the provisions superseded or amended are contained, and references in this Part of this Act to the principal Act (*a*) or to any provision of the principal Act (*a*) shall be construed as references to that Act or provision as amended by any subsequent enactment, including this Part of this Act;

(*a*) The "principal Act" is the Housing of the Working Classes Act, 1890 (s. 1).

PART II.

Town Planning.

42. *Removal of necessity to obtain previous authorisation of Local Government Board (a) to preparation or adoption of town planning scheme.*—It shall not be necessary for a local authority to obtain the authority of the Local Government Board (*a*) to prepare or adopt a town planning scheme, and accordingly for sub-section (2) of section fifty-four of the Housing, Town Planning, etc. Act, 1909 (hereinafter referred to as the Act of 1909), the following provision shall be substituted:—

"(2) A local authority within the meaning of this Part of this Act may by resolution decide—

"(*a*) to prepare a town planning scheme with reference to any land within or in the neighbourhood of their area in regard to which a scheme may be made under this Act; or

"(*b*) to adopt, with or without any modifications, any town planning scheme proposed by all or any of the owners of any land with respect to which the local authority are themselves by this Act authorised to prepare a scheme:

"Provided that—

"(i) if any such resolution of a local authority extends to land not within the area of that local authority, the resolution shall not have effect until it is approved by the Local Government Board (*a*), and the Board (*a*) may, in giving their approval, vary the extent of the land to be included within the area of the proposed town planning scheme; and

"(ii) where any local authorities are desirous of acting jointly in the preparation or adoption of a town planning scheme, they may concur in appointing out of their respective bodies a joint committee for the purpose, and in conferring with or without restrictions on any such committee any powers which the appointing councils might exercise for the purpose, and the provisions of sections fifty-seven and fifty-eight of the Local Government Act, 1894, in regard to joint committees, shall, with the necessary modifications, apply to any joint committee so appointed."

(*a*) Now the Minister of Health.

43. *Extension of power to make regulations as to procedure.*—(1) The power of the Local Government Board (*a*) of making regulations under section fifty-six of the Act of 1909 shall include power to make regulations as to the procedure consequent on the passing of a resolution by a local authority to prepare or adopt a town planning scheme, and provision shall be made by those regulations for securing that a local authority after passing such a resolution shall proceed with all reasonable speed with the preparation or adoption of the town planning scheme, and shall comply with any regulations as to steps to be taken for that purpose, including provisions enabling the Local Government Board (*a*), in the case of default or dilatoriness on the part of the local authority to act in the place and at the expense of the local authority.

(2) Sub-section (2) of section fifty-six of the Act of 1909 shall have effect as if the following paragraph were added thereto :

" For securing that the council of the county in which any land proposed to be included in a town planning scheme is situated (1) shall be furnished with a notice of any proposal to prepare or adopt such a scheme and with a copy of the draft scheme before the scheme is made, and (2) shall be entitled to be heard at any public local inquiry held by the Local Government Board (*a*) in regard to the scheme."

(*a*) Now the Minister of Health.

44. *Repeal of provisoes to ss.* 54 (4) *and* 55 (2) *of* 9 *Edw.* 7, *c.* 44.—The proviso to sub-section (4) of section fifty-four and the proviso to sub-section (2) of section fifty-five of the Act of 1909 (which provisoes relate to the publication and laying before Parliament of town planning schemes) are hereby repealed.

45. *Power to permit development of estates pending preparation and approval of town planning schemes.*—The Local Government Board (*a*) may by special or general order provide that where a resolution to prepare or adopt a town planning scheme has been passed, or where before the passing of this Act the preparation or adoption of a town planning scheme has been authorised, the development of estates and building operations may be permitted to proceed pending the preparation or adoption and approval of the town planning scheme, subject to such conditions as may be prescribed by the order, and where such permission has been given the provisions of sub-section (2) of section fifty-eight of the Act of 1909 which relates to the rights of compensation shall have effect as if the following proviso were added thereto :

" Provided also that this provision shall not apply as respects any building erected, contract made, or other thing done in accordance with a permission granted in pursuance of an order of the Local Government Board (*a*) allowing the development of estates and building operations to proceed pending the preparation or adoption and approval of the scheme, and the carrying out of works so permitted shall not prejudice any claim of any person to compensation in respect of property injuriously affected by the making of the scheme."

(*a*) Now the Minister of Health.

46. *Preparation of town planning schemes.*—(1) The council of every borough or other urban district containing on the first day of January nineteen hundred and twenty-three a population according to the last census for the time being of more than twenty thousand shall, within *three* years (*a*) after that date, prepare and submit to the

Local Government Board (*b*) a town planning scheme in respect of all land within the borough or urban district in respect of which a town planning scheme may be made under the Act of 1909.

(2) Without prejudice to the powers of the council under the Act of 1909, every scheme to which this section applies shall deal with such matters as may be determined by regulations to be made by the Local Government Board (*b*).

(3) Every regulation so made shall be laid before both Houses of Parliament as soon as may be after it is made, and, if an address is presented by either House within twenty-one days on which that House has sat next after any such regulation is laid before it praying that the regulation may be annulled, His Majesty in Council may annul the regulation, but without prejudice to the validity of anything previously done thereunder.

(*a*) Now six years. See Housing, etc. Act, 1923, s. 19, p. 174.
(*b*) Now the Minister of Health.

47. *Power of Local Government Board* (*a*) *to require town planning scheme.*—(1) Where the Local Government Board (*a*) are satisfied after holding a public local inquiry that a town planning scheme ought to be made by a local authority as respects any land in regard to which a town planning scheme may be made under the Act of 1909, the Board (*a*) may by order require the local authority to prepare and submit for their approval such a scheme, and, if the scheme is approved by the Board (*a*), to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, and for executing any works which, under the scheme or under Part II. of the Act of 1909, the authority are required to execute.

(2) Any order made by the Local Government Board (*a*) under this section shall have the same effect as a resolution of the local authority deciding to prepare a town planning scheme in respect of the area in regard to which the order is made.

(3) If the local authority fail to prepare a scheme to the satisfaction of the Board (*a*) within such time as may be prescribed by the order, or to enforce the observance of the scheme or any provisions thereof effectively, or to execute any such works as aforesaid, the Board (*a*) may themselves act, or in the case of a borough or other urban district the population of which is less than 20,000, or of a rural district, may, if the Board (*a*) think fit, by order, empower the county council to act in the place and at the expense of the local authority (*b*).

(*a*) Now the Minister of Health.
(*b*) See also the provisions of s. 61 of the Housing, Town Planning, etc. Act, 1909.

48. *Consequential and minor amendments.*—The amendments

specified in the second column of the Third Schedule to this Act (which relate to consequential and minor matters) shall be made in the provisions of Part II. of the Act of 1909 mentioned in the first column of that schedule.

PART IV.

General.

51. *Extent.*—This Act shall not extend to Scotland or Ireland.

52. *Short title.*—(1) This Act may be cited as the Housing, Town Planning, etc. Act, 1919.

(3) Part II. of the Housing, Town Planning, etc. Act, 1909, and Part II. of this Act may be cited together as the Town Planning Acts, 1909 and 1919.

THIRD SCHEDULE.

Minor and Consequential Amendments of the Provisions as to Town Planning.

Section 48.

Enactment to be amended.	Nature of Amendment.
Housing, Town Planning, etc. Act, 1909 (9 Edw. 7, c. 44):	
Section 54 . .	At the end of sub-section (1) the following proviso shall be inserted:— "Provided that where a piece of land already built upon or a piece of land not likely to be used for building purposes is so situate with respect to any land likely to be used for building purposes that the general object of the scheme would be better secured by its inclusion in any town planning scheme made with respect to the last-mentioned land, the scheme may include such piece of land as aforesaid, and may provide for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect." Sub-section (3) shall be omitted.
Section 56 . .	In sub-section (1) for the words "applications for authority to prepare or adopt a town planning scheme, the preparation of the scheme" there shall be substituted the words "the preparation

Enactment to be amended.	Nature of Amendment.
Housing, Town Planning, etc. Act, 1909 (9 Edw. 7, c. 44):—*continued.*	
Section 56—*continued.*	or adoption of a town planning scheme," and after the word "adopted" there shall be inserted the words "the variation or revocation of a "scheme," and after the words "the provisions thereof" there shall be inserted the words "or the variation or revocation of the scheme." In paragraph (*a*) of sub-section (2) for the words "at every stage of the proceedings, by means of conferences and such other means" there shall be substituted the words "by such means."
Section 58 . .	In sub-section (2) for the words "time at which the application for authority to prepare the scheme was made" there shall be substituted the words "date of the resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect as the case may be," and for the words "the application was made" there shall be substituted the words "such date or other time as aforesaid."
Section 59 . .	In sub-section (2) the words "with a view to securing the amenity of the area included in the scheme or any part thereof" shall be omitted.
Section 65 . .	In sub-section (2) after the words "made thereunder" where they secondly occur there shall be inserted the words "including the cost of the preparation or adoption of a scheme."
Fourth Schedule .	In paragraph (18) the words "by means of conferences, etc.," shall be omitted.
Fifth Schedule . .	In paragraph (1) for the words "and for the purpose of an application for authority to prepare or adopt" there shall be substituted the words "the preparation or adoption of," and for the words "Submission of plans and estimates" there shall be substituted the words "Preparation and deposit of plans."

THE HOUSING, ETC. ACT, 1923.

(13 & 14 Geo. 5, c. 24.)

An Act to amend the enactments relating to the Housing of the Working Classes (including the amendment and revocation of building byelaws), Town Planning and the Acquisition of Small Dwellings.

PART I.

Amendments of Housing Acts.

16. *Minor amendments.*—The amendments specified in the second column of the Second Schedule to this Act (relating to minor amendments of Housing Acts) shall be made in the provisions of the Housing Acts specified in the first column of that schedule.

PART II.

Town Planning, etc.

18. *Determination of questions as to compensation.*—Any question which under sub-section (4) of section 58 of the Housing, Town Planning, etc. Act, 1909, is to be determined by the arbitration of a single arbitrator appointed by the Minister shall be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.

19. *Extension of time for preparation of schemes.*—The time within which councils of boroughs and urban districts are required by section forty-six of the Housing, Town Planning, etc. Act, 1919, to prepare and submit to the Minister town planning schemes shall be extended to six years from the first day of January, nineteen hundred and twenty-three, and accordingly sub-section (1) of that section shall have effect as if for the words "three years" there were substituted the words "six years."

20. *Notice to withdraw or modify provisions of scheme.*—(1) The responsible authority may, at any time within one month after the date of an award of compensation in respect of property injuriously affected by the making of a town planning scheme, give notice to the owner of that property of their intention to withdraw or modify all or any of the provisions of the scheme which gave rise to the claim for compensation.

(2) Where such notice has been given, the responsible authority shall, within three months from the date of the notice, submit for the Minister's approval a varying scheme carrying into effect such

withdrawal or modification as aforesaid, and upon approval by the Minister of the varying scheme, whether with or without modification, and payment by the authority of the owner's costs of and in connection with the arbitration, the award of the arbitrator shall be discharged, without prejudice, however, to the right of the owner to make a further claim for compensation in respect of the said scheme as varied.

(3) No award of compensation in respect of property injuriously affected by the making of a town planning scheme shall be enforceable within one month from the date thereof, or, if notice has been given by the authority under the preceding sub-section, pending the Minister's decision on the varying scheme.

21. *Power to make town planning schemes in special cases.*—Where it appears to the Minister that on account of the special architectural, historic or artistic interest attaching to a locality it is expedient that with a view to preserving the existing character and to protecting the existing features of the locality a town planning scheme should be made with respect to any area comprising that locality, the Minister may, notwithstanding that the land or any part thereof is already developed, authorise a town planning scheme to be made with respect to that area prescribing the space about buildings, or limiting the number of buildings to be erected, or prescribing the height or character of buildings, and, subject as aforesaid, the Town Planning Acts, 1909 to 1923, shall apply accordingly.

PART IV.

General.

23. [*Application of Act to Scotland with modifications.*]

25. *Short title.*—(1) This Act may be cited as the Housing, etc. Act, 1923.

(4) The Town Planning Acts, 1909 and 1919, and Part II. of this Act may be cited together as the Town Planning Acts, 1909 to 1923.

SECOND SCHEDULE.

Minor Amendments of Housing Acts.

* * * * *

Housing Town Planning, etc. Act, 1909.

S. 59 (1). After the words "if or so far as the provisions" there shall be inserted the words "are also contained in any public general or local Act or order having the force of an Act of Parliament in force in the area or."

* * * * *

APPENDIX B.

(I.)

THE MINISTRY OF HEALTH (TOWN PLANNING) REGULATIONS, 1921.

The Minister of Health, in pursuance of the powers conferred on him by section 56 of the Housing, Town Planning, etc. Act, 1909, and section 43 of the Housing, Town Planning, etc. Act, 1919, and of all other powers enabling him in that behalf, hereby makes the following Regulations :—

Title and Interpretation.

1.—(1) These Regulations may be cited as the Ministry of Health (Town Planning) Regulations, 1921, and shall come into force on the 2nd day of May, 1921.

(2) The Town Planning Procedure Regulations (Preparation of Schemes by Local Authorities), 1914, are hereby revoked, provided that those regulations shall, save in so far as they are inconsistent with any of the provisions of the Housing, Town Planning, etc. Act, 1919, and subject to the provisions of article 17 of these regulations, continue to apply in all cases where before the 31st day of July, 1919, a local authority have been authorised to prepare a town planning scheme.

2.—(1) In these regulations, unless the context otherwise requires :—

" The Minister " means the Minister of Health ;

" Interested Local Authority " means the council of the county in which, or any local authority in whose area, land proposed to be included in a town planning scheme is situate ;

" Map " means a map on a scale of not less than 25 inches to the mile or such smaller scale as the Minister may in any particular case approve, and includes a plan or a series of maps or plans ;

" Owners " has the same meaning as in the Lands Clauses Acts, but does not include persons holding or entitled to the rents and profits of land or premises under any lease or agreement the unexpired portion whereof is less than three years ;

" Prescribed person " means :—

(*a*) any owner of land included or proposed to be included in a town planning scheme ;

(*b*) any interested local authority ;

(*c*) the Minister of Agriculture and Fisheries, where a town planning scheme provides for the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment;

(*d*) the Commissioners of Works, where a town planning scheme includes any land situate within the prescribed distance from any of the royal palaces or parks;

(*e*) the Minister of Transport, where a town planning scheme provides for the inclusion of any land on which any railways, tramways or light railways are constructed or are authorised to be constructed.

"Advertisement" means an advertisement published at least once during each of two successive weeks in a newspaper or newspapers circulating in the area of the local authority.

(2) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Resolution to Prepare Town Planning Scheme.

3.—(1) The resolution of a local authority deciding to prepare a town planning scheme shall define the area of the proposed scheme by reference to a map (hereinafter called "Map No. 1") showing by means of boundary lines defined in colour or otherwise the area of the land to which the resolution applies.

(2) The local authority shall as soon as may be after passing the resolution give notice thereof by advertisement and shall include in the notice a statement that Map No. 1 or a copy thereof will be open for inspection at a specified place or places, and that any suggestions for the inclusion or exclusion of any lands in or from the area of the proposed scheme may be sent in writing to the local authority within a specified period not being less than twenty-one days from the date of the first advertisement.

(3) A certified copy of the resolution and of Map No. 1 and of each advertisement shall be sent as soon as may be by the local authority to the Minister, together with the documents and full particulars of the matters specified in the first schedule to these regulations.

(4) A certified copy of the resolution shall be sent to any interested local authority, and, if they so require, of Map No. 1, or a map on a scale of 6 inches to the mile certified to show accurately the area of the land to which the resolution applies.

(5) Where the approval of the Minister is required to the resolution of a local authority deciding to prepare a town planning scheme, the local authority shall give notice by advertisement that the Minister has approved the resolution as soon as may be after the date of such approval.

Preliminary Statement of Proposals for Development.

4.—(1) Within a period of six months from the date of a resolution deciding to prepare a town planning scheme, or, where the resolution extends to land not within the area of the local authority, within a period of six months from the date of the approval of the resolution by the Minister, the local authority shall prepare and adopt by resolution a preliminary statement of proposals for development (hereinafter called " the preliminary statement "), and shall for that purpose take into consideration any representations in writing made by persons interested or by any interested local authority with respect to the area of the proposed scheme or otherwise with respect to the development of the area.

(2) The preliminary statement shall contain particulars of the matters specified in the second schedule to these regulations and shall refer to a map (hereinafter called " Map No. 2 ") showing by means of boundary lines defined in colour or otherwise the area to be included and illustrating, so far as possible, the said particulars.

5.—(1) The local authority shall, before adopting a preliminary statement by resolution, give notice of their intention so to do by advertisement and shall take such other steps as they may think fit by means of public posters or otherwise to bring their intention to the notice of persons interested.

(2) The said notice or other public announcement shall include a statement that a draft of the preliminary statement proposed to be adopted and a map illustrating the particulars in the draft preliminary statement will be open for inspection at a specified place or places, and that any objections or representations with regard to the draft statement may be sent in writing to the local authority within a specified period not being less than twenty-one days from the date of the first advertisement.

(3) The local authority shall send to any interested local authority the draft of the preliminary statement, and, if so required by them, a map of so much of the land as is situate in the area of that authority, illustrating the particulars in the draft statement so far as it relates to that land.

(4) The local authority shall take into consideration any objections and representations in writing which they may receive within the period specified under paragraph (2) of this article, and shall take such steps as they may think necessary by means of conferences or otherwise to secure so far as may be possible the agreement and co-operation of persons interested.

6.—(1) As soon as may be after the passing of a resolution

adopting a preliminary statement the local authority shall send to the Minister a certified copy of—

(*a*) the resolution, the preliminary statement and Map No. 2;

(*b*) each advertisement or other public announcement;

(*c*) any objections or representations in writing received by the local authority which have not been removed or met in the preliminary statement adopted;

(*d*) particulars of the matters specified in the third schedule to these regulations.

(2) Where the preliminary statement relates to land not within the area of the local authority, the local authority shall send to the local authority of the district in which such land is situate a certified copy of the resolution, of the preliminary statement, and of Map No. 2 so far as it relates to such land.

(3) Where any land to which the resolution deciding to prepare a town planning scheme applied is not included in the land to which the preliminary statement relates, the local authority shall notify the fact thereof to the owner of such land.

7.—(1) The Minister shall thereupon take the preliminary statement into consideration and shall notify the local authority that he approves or disapproves it, as the case may be, or that he approves it with modifications, provided that any such approval shall be without prejudice to any provisions of the town planning scheme to be submitted by the local authority to the Minister as hereinafter mentioned or to the approval or disapproval by the Minister of that scheme.

(2) Where the Minister notifies the local authority that he disapproves the preliminary statement, the local authority shall, within three months from the date of such notification, prepare and adopt by resolution another preliminary statement, and the provisions of this and the two preceding articles shall, with the necessary modifications, apply to such further statement.

8. The local authority shall as soon as may be after the receipt of a notification from the Minister approving the preliminary statement with or without modifications give notice thereof by advertisement, and shall include in the notice a statement that a print of the preliminary statement and Map No. 2, as approved by the Minister, will be open for inspection at a specified place or places, and that the local authority propose to proceed forthwith with the preparation of the town planning scheme for submission in due course to the Minister.

Preparation of Town Planning Scheme.

9.—(1) A draft of the town planning scheme (hereinafter called "the draft scheme") shall be adopted by resolution of the loca

authority not later than twelve months after the date of the approval by the Minister of the preliminary statement.

(2) The draft scheme shall refer to a map (hereinafter called "Map No. 3") showing by means of boundary lines defined in colour or otherwise the area included in the scheme, and illustrating such particulars and details in relation thereto as can conveniently be indicated by reference letters, numbers, distinguishing colours or otherwise, and more particularly the matters specified in the fourth schedule to these regulations.

10.—(1) The local authority by whom a resolution has been passed adopting a draft scheme shall forthwith give notice thereof by advertisement and shall include in the notice a statement that a print of the draft scheme and Map No. 3, or a certified copy thereof, will be open for inspection at a specified place or places, and that any interested local authority or other person desiring to object or make representations with respect to the draft scheme or any part thereof may send the representations or objections in writing to the local authority within a specified period not being less than four weeks from the date of the first advertisement.

(2) The local authority shall as soon as may be after the passing of the resolution adopting the draft scheme, in addition to the publication of the said advertisement, serve a notice in the same terms on the prescribed persons.

(3) A certified copy of the resolution and of each advertisement together with a certified copy of the draft scheme and of Map No. 3, shall be sent forthwith by the local authority to the Minister.

11. The local authority shall take into consideration all objections and representations in writing received by them within the period specified under paragraph (1) of article 10, and shall give full opportunity to any interested local authority and to persons making such objections or representations, including persons representing architectural or archæological societies or otherwise interested in the amenities of the scheme, to be heard in such manner as the circumstances and the justice of the case may require.

Submission of Town Planning Scheme to Minister.

12. (1)—The local authority shall within six months from the date of the resolution adopting the draft scheme pass a resolution finally approving the scheme with or without modifications and directing that the scheme as approved by them and the map to which the said scheme refers (hereinafter called "Map No. 4") shall be sealed with the seal of the authority and submitted to the Minister for his approval:

Provided that if the map required by this article to be sealed is identical in all respects with the Map No. 3 prepared in accordance with article 10 hereof, the last-mentioned map, if the local authority think fit, may with the consent of the Minister be used for the purposes of this article, but if so used it shall be marked as Map No. 4 in addition to being marked as Map No. 3.

(2) The local authority shall as soon as may be thereafter submit a sealed duplicate of the scheme and of Map No. 4 to the Minister for his approval, together with the documents and information specified in the fifth schedule to these regulations, and shall send to the Minister copies of all objections and representations in writing received by them which have not been removed or met in the scheme.

(3) A print of the scheme shall be sent by the local authority to every interested local authority.

13.—(1) A local authority who have submitted a scheme to the Minister for his approval shall forthwith give notice thereof by advertisement, and shall include in the notice a statement that a print of the scheme submitted and Map No. 4, or a certified copy thereof, will be open for inspection at a specified place or places, and that any objections or representations relating thereto shall be sent in writing to the Minister within a period of not less than twenty-one days from the date of the first advertisement.

(2) A certified copy of each advertisement shall be sent to the Minister as soon as may be after the publication thereof.

14.—(1) The Minister shall, before taking the scheme into his consideration, cause a public inquiry to be held at which any local authority or persons interested in or affected by the scheme may be heard, and shall cause a report of such inquiry to be made to him.

(2) The Minister shall, after duly considering the scheme and the said report, notify the local authority of his intention to approve or disapprove the scheme, as the case may be, or to approve it with modifications.

(3) Where the Minister notifies the local authority that he disapproves the scheme, the local authority shall, within six months from the date of such notification, prepare and adopt by resolution another scheme, and the provisions of articles 9 to 13 inclusive and of this article shall, with the necessary modifications, apply to such further scheme.

15.—(1) The local authority shall, on receipt of a notification from the Minister approving a scheme with or without modifications, forthwith give notice thereof by advertisement and shall include in the notice a statement that a print of the scheme in the form in which the Minister has notified his intention to approve it may be inspected at a specified place or places.

(2) The local authority shall in addition to the publication by advertisement as aforesaid serve a notice upon the owners of the land included in the scheme and upon any interested local authority to the like effect, but including also a statement that any owner or interested local authority desiring to object to the approval of the scheme by the Minister may within twenty-one days from the date of the service of the notice send any objections or representations in writing with the grounds thereof to the Minister.

(3) The local authority shall send to the Minister certified copies of the said notice and of each advertisement.

Approval of Scheme by Minister.

16.—(1) The Minister shall take into consideration any objections or representations so received by him and shall thereafter by order finally approve the scheme with or without modifications and shall notify the local authority accordingly.

(2) The local authority shall on receipt of the order of the Minister approving the scheme, forthwith serve upon the prescribed persons a copy of the order approving the scheme and shall also give notice of the order by advertisement and shall include in the notice a statement that a copy of the order of the Minister approving the scheme may be inspected at a specified place or places.

(3) A certified copy of each advertisement shall be sent by the local authority to the Minister.

Supplemental.

17.—(1) Where before the 31st day of July, 1919, a local authority have been authorised to prepare a town planning scheme, the Minister may by order direct that these regulations shall apply with such modifications as, in the opinion of the Minister, the circumstances of the case may require.

(2) Where after the 31st day of July, 1919, and before the date on which these regulations come into force, a local authority have passed a resolution deciding to prepare a town planning scheme, these regulations shall apply as though the resolution had been passed on the day on which these regulations come into force, or, where the resolution extends to land not within the area of the local authority, on the day on which these regulations come into force or on which the approval of the Minister is given, whichever is the later.

18. A local authority may, if they think fit, adopt by resolution a draft scheme within the period prescribed by these regulations for the adoption by resolution of a preliminary statement, and in that case the draft scheme shall, if the Minister so directs, be substituted for the preliminary statement, and these regulations shall

apply accordingly with such modifications as, in the circumstances of the case, the Minister may direct.

19.—(1) The Minister may, if he thinks fit in any particular case, and subject to such conditions as he may impose, extend the period during which anything is required to be done under these regulations, or dispense with any of the requirements of these regulations, other than requirements made obligatory by any statute, provided that he is satisfied that there is reasonable cause for such extension or dispensation and that the interests of any person will not be prejudiced thereby.

(2) The local authority may, if they think fit and subject to such conditions as they may impose, extend the time during which any suggestions, objections, or representations in writing may be sent to the authority under the provisions of articles 3, 5 and 10 of these regulations.

20. A local authority shall furnish the Minister with all such further information or particulars as the Minister may from time to time require.

21. All maps, documents and notices deposited for inspection under these regulations shall be available for inspection at all reasonable hours and without payment of any fee.

22. A notice required to be served in pursuance of these regulations shall be served :—

(*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or

(*b*) by leaving the same at his usual or last known place of abode of such person as aforesaid ; or

(*c*) by post addressed to the usual or last known place of abode of such person ; or

(*d*) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to the clerk or secretary or leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office :

Provided that if the owner of any land is not known to and after reasonable inquiry cannot be found by the local authority, then the notice may be served by leaving it, addressed to the owner, with some occupier of the land, or, if there be not an occupier, then by causing it to be put up on some part of the land or in some conspicuous place in the immediate neighbourhood thereof :

Provided also that an accidental omission to serve a notice required under these regulations shall not render any proceedings thereunder invalid.

FIRST SCHEDULE.

DOCUMENTS AND PARTICULARS TO BE SENT TO THE MINISTER OF HEALTH AFTER THE PASSING OF A RESOLUTION DECIDING TO PREPARE A TOWN PLANNING SCHEME.

Article 3.

(1) Documents required under article 3 (3) of these regulations.

(2) Copies of all suggestions received by the local authority under article 3.

(3) Where the resolution extends to land not within the area of the local authority passing the resolution, the reasons for the inclusion of land outside the area of the local authority.

(4) Information, in the form required by the Minister, as to the responsible authority under the scheme; the acreage and general character and development of the area; and the inclusion of any land already built upon or not likely to be used for building purposes, or of any Crown land.

SECOND SCHEDULE.

PARTICULARS TO BE INCLUDED IN THE PRELIMINARY STATEMENT OF PROPOSALS FOR DEVELOPMENT.

Article 4.

(1) Area to be included in the town planning scheme (to be defined by the inner edge of a boundary line shown on Map No. 2).*

(2) (*a*) The principal new streets or roads which it is proposed shall be made as part of the scheme, with their position, and any proposed widenings of any existing streets or roads.

(*b*) Building lines or spaces about buildings proposed to be prescribed in relation to the principal new streets or widenings.

(3) Roads, streets, or ways which it is proposed to stop up or divert.

(4) Restrictions proposed, and the areas to which the several restrictions are to apply, as regards—

(*a*) character of buildings to be erected (*e.g.* whether dwelling-houses, public buildings, business premises, factories or workshops for light industries, or factories or workshops for heavy industries, or partly one class of building and partly another);

* The following particulars are also to be shown on Map No. 2:—

(*a*) Existing main roads;

(*b*) Roads repairable by the inhabitants at large;

(*c*) Roads or footways over which the public have a right of way;

(*d*) Land already built upon within the area of the scheme or in the immediate neighbourhood thereof, distinguishing factories;

(*e*) Railways, tramways or light railways constructed or authorised to be constructed within the area of the scheme or in the immediate neighbourhood thereof;

(*f*) Land forming part of any common, open space or allotment within the meaning of s. 73 of the Housing, Town Planning, etc. Act, 1909, within the area of the scheme or in the immediate neighbourhood thereof.

(*b*) density of buildings (that is, number of dwelling-houses to the acre, and proportion of site to be covered by buildings);

(*c*) height of buildings.

The proposed restrictions and the areas to which they are to apply (as well as open spaces or other areas not to be built upon: see next clause) should be shown by distinctive colours or hatchings on Map No. 2.

(5) Areas proposed to be reserved for open spaces or other areas not to be built upon.

THIRD SCHEDULE.

MATTERS WHEREOF PARTICULARS ARE TO BE SENT TO THE MINISTER IN CONNECTION WITH AN APPLICATION FOR APPROVAL OF A PRELIMINARY STATEMENT.

Article 6.

(1) Documents required under article 6 (1) (*a*), (*b*), and (*c*) of these regulations.

(2) Particulars, in the form required by the Minister, respecting lands in the possession of local authorities, housing schemes, and ancient monuments in the area.

FOURTH SCHEDULE.

MATTERS WHEREOF PARTICULARS AND DETAILS ARE TO BE SHOWN ON MAP NO. 3.

Article 9.

(1) The area included in the draft scheme (to be defined by the inner edge of a boundary line shown on the map).

(2) (*a*) New streets, and widenings of any existing streets or roads, proposed to be made as part of the scheme.

(*b*) Building lines or spaces about buildings proposed to be prescribed.

(3) Particulars required under paragraphs (3), (4), and (5) of the second schedule. As regards areas not to built upon, the purposes for which they are to be reserved should be indicated.

FIFTH SCHEDULE.

DOCUMENTS AND PARTICULARS TO BE SENT TO THE MINISTER OF HEALTH IN CONNECTION WITH THE SUBMISSION OF A TOWN PLANNING SCHEME FOR APPROVAL.

Article 12.

(1) Documents required under article 12 (2) of these regulations.

(2) Six prints of the scheme and a certified copy of the resolution directing that the scheme be submitted to the Minister for approval.

(3) A map on a scale of not less than 25 inches to the mile (to be marked and known as "Map No. 5") showing the area of the land included in the scheme so divided as to indicate as nearly as may be the portions of the land belonging to different owners, and showing as regards each parcel of land by reference to a list of owners the name of the owner thereof.

(4) A list of all local Acts, provisional orders, bye-laws or regulations in force in the area of any local authority any part of whose district

is included in the scheme, and copies of those which contain any provisions affecting the scheme, with references thereto.

(5) Particulars, in the form required by the Minister of proposed acquisition of land by local authorities under the scheme; of works to be executed; of proposed appropriations of commons, open spaces, or allotments; of any enactments or other provisions which it is proposed to suspend, with the reasons for the proposal; of the estimated cost of carrying out the scheme; and of the acreage, population, rateable value, etc., of the districts concerned.

Given under the Official Seal of the Minister of Health this Twenty-ninth day of March, in the year One thousand nine hundred and twenty-one.

(L.S.) I. G. GIBBON,
Assistant Secretary, Ministry of Health.

(II.)

THE TOWN PLANNING (GENERAL INTERIM DEVELOPMENT) ORDER, 1922.

In exercise of the powers conferred on him by section 45 of the Housing, Town Planning, etc. Act, 1919, the Minister of Health hereby orders as follows:—

1. This Order may be cited as the Town Planning (General Interim Development) Order, 1922.

2. In this Order the following expressions have the meanings hereby assigned to them respectively:—

"The Minister" means the Minister of Health;

"Area" means any area in respect of which a resolution deciding to prepare a Town Planning Scheme has been duly passed and (where necessary) approved by the Minister under section 42 of the Housing, Town Planning, etc. Act, 1919, or for which authority to prepare a scheme has been given under section 54 of the Housing, Town Planning, etc. Act, 1909;

"The Local Authority" means the Local Authority who have decided or been authorised to prepare a scheme for the area concerned.

3. For the purpose of section 45 of the Housing, Town Planning, etc. Act, 1919, the local authority may permit the development of estates and building operations to proceed in the area pending the preparation and approval of a Town Planning Scheme, subject to the conditions contained in this Order.

4. A person who desires to apply for permission under the last preceding article, shall apply to the local authority for permission in writing and shall furnish to the local authority, together with his application and in the form required by them, a plan in duplicate

showing the proposed method of development and proposed buildings and such further particulars as the local authority may require.

5. The development of estates and building operations shall comply with all such requirements (*a*) as the local authority may reasonably impose.

(*a*) In a Memorandum (Memo. 70/D) issued by the Minister of Health in August, 1922, it is observed: "The local authority's requirements should be as few and simple as possible." Some notes upon the character and extent of proper requirements are added to the Memorandum, and these notes deal with considerations which may arise as to streets, widenings, open spaces, building lines, and the character and density of buildings.

6. The local authority shall not, except with the consent of the Minister, permit any development or building operations inconsistent with the provisions of any local Acts, regulations, or building bye-laws in force in the area (*a*).

(*a*) The following paragraph appears in a circular letter from the Ministry of Health, addressed to local authorities and dated the 15th February, 1923:—

"The Minister finds that some local authorities have read Clause 6 of the General Interim Development Order and paragraph 13 of the Explanatory Memorandum as meaning that they are precluded from permitting for the purpose of the Order development in contravention of building bye-laws which is duly authorised under ss. 24 and 25 of the Housing, Town Planning, etc. Act, 1919. I am to state that, in the case of development permitted by the local authority or by the Minister under those sections, the special approval of the Minister need not be obtained under Clause 6 of the Order, and permission for the purposes of the Order should not be withheld by the local authority where the development complies with other contemplated provisions of the Town Planning Scheme. Appeals under the sections in question will be treated by the Minister as appeals also under the Development Order, where the development concerned is in a town planning area."

7. The local authority shall, as soon as may be, inform the applicant in writing that his application for permission to proceed is granted (*a*) or refused, as the case may be, and, if the application is granted, shall state in writing the terms of any requirements which they may impose.

(*a*) The Minister of Health has stated that "adequate records must be kept of all permissions granted under the order, and should be available for reference when required." See the circular letter addressed to local authorities, dated the 23rd August, 1922.

8. Any applicant aggrieved by the neglect or refusal of the local authority to grant permission, or by any requirements imposed by the local authority, may appeal to the Minister, whose decision shall be final and shall have effect as if it were the decision of the local authority (*a*).

(*a*) A circular letter addressed from the Minister of Health to local authorities, and dated 29th January, 1923, states: "The Minister considers that the presumption should always be in favour of the person who wishes to undertake development."

9. Subject and without prejudice to the power of the Minister to revoke or vary this Order, the Order shall remain in force in an area or part of an area until the date of the approval by the Minister of a preliminary statement for that area or part under the Ministry of Health (Town Planning) Regulations, 1921, or, where a preliminary statement is not required to be prepared, the date of the approval by the Minister of a scheme for that area or part.

Given under the Official Seal of the Minister of Health, this Twelfth day of August, in the year One thousand nine hundred and twenty-two.

(L.S.) I. G. GIBBON,

Assistant Secretary, Ministry of Health.

FORMS OF PERMISSION FOR USE UNDER THE TOWN PLANNING (GENERAL INTERIM DEVELOPMENT) ORDER, 1922 (ISSUED BY THE MINISTER OF HEALTH FOR THE ASSISTANCE OF LOCAL AUTHORITIES IN FEBRUARY, 1923).

FORM A.—*Suggested as suitable for use where the plan submitted under the bye-laws is sufficient also for the purpose of a permission under the Order.*

Council of

Housing, Town Planning, etc. Acts, 1909 *and* 1919.
Town Planning (General Interim Development) Order, 1922.

Town Planning Scheme.

In pursuance of their powers under Article 3 of the above-mentioned Order the Council hereby permit street(s) to be laid out and building(s) to be erected * (on the site shown on the accompanying plan) in accordance with the plans submitted by under the bye-laws, and approved by the Council on the day of 192 , subject to compliance with the requirements specified hereunder.

Here specify any requirements † not adequately indicated on the plans submitted under the bye-laws, e.g. :

(1) *No part of the buildings(s) except,* e.g. *bay-windows, porches or other similar projections, and no structure other than boundary walls and fences to be erected nearer to the boundary of the street than feet.*

(2) *The building(s) not to occupy more than of its (their) curtilage(s).*

(3) *The building(s) not to be used for any other purpose than that indicated on the plan without the consent of the Council or on appeal the Minister of Health.*

* For use where the bye-law plan does not sufficiently identify the site. It may be possible in some cases to define the site without reference to a special plan.

† The requirements are illustrations only, and the Council should not make any requirements which are not really essential.

* [The development may depart from the building bye-laws (Local Acts, regulations) in force in the area of the Scheme to the following extent (extent shown in the following cross-section) :—

Here insert a cross-section showing the lay-out of streets or specify any departure from the bye-laws, etc., permitted in respect of the development, e.g. *the streets to be of a width of feet, with a carriage-way of feet and one footway(s) of feet (each), subject to (specify any necessary provisions,* e.g. *as to turning spaces).*

Except as aforesaid] the permission is granted subject to due compliance with the building bye-laws (Local Acts, regulations) and general statutory provisions in force in the area, and nothing herein shall be regarded as dispensing with such compliance, except to the extent herein specified.

Dated this day of 192 .

(To be sealed with the common seal of the Council.)

Signature of the Clerk to the Council
(or other competent officer).

* For use where a departure from the bye-laws, etc., is permitted in accordance with the consent of the Minister under Article 6 of the Order.

FORM B.—*Suggested as appropriate in cases of proposals for development more extensive than those for which Form A may be found suitable.*

Council of

Housing, Town Planning, etc. Acts, 1909 *and* 1919.
Town Planning (General Interim Development) Order, 1922.

Town Planning Scheme.

In pursuance of their powers under Article 3 of the above-named Order the Council hereby permit the development of estates and building operations to proceed in accordance with the development plan and schedule of conditions annexed.*

† [The development may depart from the building bye-laws (Local Acts, regulations) in force in the area of the Scheme to the extent shown in conditions as to streets specified in the schedule.

Except as aforesaid] the permission is granted subject to due compliance with the building bye-laws (Local Acts, regulations) and general statutory provisions in force in the area, and nothing herein shall be regarded as dispensing with such compliance except to the extent aforesaid.

Dated this day of 192 .

(To be sealed with the common seal of the Council.)

Signature of Clerk to the Council
(or other competent officer).

* A specimen plan heading and schedule of conditions appear on pp. 189 and 190.

† For use where a departure from the bye-laws, etc., is permitted in accordance with the consent of the Minister under Article 6 of the Order.

Specimen Plan Heading.

Council of

Town Planning (General Interim Development) Order, 1922.

Development Plan referred to in permission of the Council, dated the day of 192 .

Specimen Schedule of Conditions.

Council of

Town Planning (General Interim Development) Order, 1922.

Schedule of Conditions referred to in permission of the Council, dated the day of 192 .

Here specify conditions,* *e.g.* :—

1. No buildings to be erected on the land which is coloured on the Plan and is intended to be reserved for the sites of streets to be laid out in accordance with the following cross-sections :—

Street A.

Street B.

2. No buildings to be erected on the land which is coloured on the Plan and is intended to be reserved for acquisition by the Council for a public open space, and no buildings to be erected on the land which is coloured and is intended to be reserved as a private open space other than buildings required for its use for that purpose (*i.e.* as a private ground for sports, play, rest and recreation, or as an ornamental garden or pleasure ground).

3. No part of any building (except, *e.g.* bay-windows, porches, and other similar projections), and no structure other than boundary walls and fences to be erected in advance of the building lines shown by lines on the Plan.

4. No buildings other than dwelling-houses (a dwelling-house being a house designed for use as a dwelling by a single family, with such outbuildings as are ordinarily required to be used therewith) and † to be erected, except that (*e.g.* shops or public buildings) may be erected on the land coloured on the Plan.

5. The number of dwelling-houses not to exceed an average of to the acre. The average to be measured over the whole of the area excluding (*e.g.* the sites of shops, public buildings, etc.) [separately over each portion of the area edged on the Plan].‡

6. No dwelling-house to occupy more than and no to occupy more than of its curtilage.

7. No building to exceed a height of , measured from the level of the street in front thereof to the eaves or parapet, or half the height of the gable, whichever is the higher.

8. No building to be used for any other purpose than that indicated in condition 4 without the consent of the Council or on appeal the Minister of Health.

* The conditions are illustrations only, and the Council should not make any requirements that are not really essential. The conditions need only be specified so far as the plan itself does not adequately indicate them.

† Specify any other buildings to be allowed without restriction.

‡ The unit of measurement should normally include private streets, private open spaces, and half the width of any public road on which the land abuts (or the whole of the road, where the land abuts on both sides). Public open spaces and public allotments can also be included to the extent considered appropriate.

APPENDIX C.

(I.)

MODEL FORM OF PRELIMINARY STATEMENT TO BE PREPARED IN ACCORDANCE WITH THE SECOND SCHEDULE TO THE MINISTRY OF HEALTH (TOWN PLANNING) REGULATIONS, 1922.

NOTE.—In the Memorandum issued by the Minister of Health with this Model Form in February, 1923, it is observed: "It will be convenient if the Local Authority will follow the form as far as possible in preparing the Preliminary Statement; the form itself is intended only as a model and not for actual use."

PRELIMINARY STATEMENT.

(The particulars are to be illustrated, so far as possible, on a map marked No. 2, according to the system of notation appended hereto—see pp. 203 and 204.)

AREA.

(1) *Area to be included in the Town Planning Scheme.*
The area should be defined by reference to the inner edge of a coloured boundary line shown on Map No. 2.

STREETS.

(2) *The principal new streets and widenings which it is proposed shall be made as part of the scheme, with their position, and building lines proposed to be prescribed in relation thereto.*
A list should be given in the following form :—

No. of street on Map No. 2.*	Situation.	Whether new street or widening.	Width of street.	Building Lines.†	
				Proposed distance between building lines.	Additional particulars, if any (*e.g.* as to variations in the case of shops or other special classes of buildings).
1.	2.	3.	4.	5.	6. *Example.* The Council to have power to permit— (i.) bay-windows and other similar projections in advance of the building line. (ii.) industrial buildings and groups of shops to be advanced to within 10 and 5 ft. respectively of the street. (iii) other buildings to be advanced on account of the levels or for other exceptional reasons.

* The new streets should be numbered consecutively and distinctly, and the length to which each distinguishing number refers, and the width, should be clearly marked on the map.

† It should be noted that building lines are required to be given only as

(3) *Roads, streets or ways which it is proposed to stop up or divert.*

A list should be given in the following form :—

No. on Map No. 2.	Situation.	Number on Map No. 2 of new street, the construction of which is deemed to provide an equally convenient right of way.
1.	2.	3.

BUILDINGS.

(4) *Proposed restrictions on buildings and the areas to which the several restrictions are to apply :—*

CHARACTER.

(*a*) *Character of buildings to be permitted.*
Particulars should be given showing in the following form the uses to which different areas are allocated.

Locality of area.	Reference to marking on Map No. 2.	Approximate acreage of area.	Buildings for which the respective areas are primarily intended.	Buildings proposed to be allowed with the consent of the Council, subject to appeal to the Minister.
1.	2.	3.	4.	5.
Examples—				
I. (*Residential*)			Dwelling-houses and other residential buildings.	Other buildings, but not industries likely to injure the amenity of the area * (Consent not however to be required to erection of shops, offices or public buildings on land edged and cross hatched).
II. (*Special Industrial*)			Industrial Buildings.	Other buildings, and consent to be required also to offensive trades and alkali or similar works.
III. (*Special Business*)			Shops and Business Premises.	Other buildings.
IV. (*General*)			Any buildings (except those specified in succeeding column).	Offensive trades and alkali and similar works.

regards the specified new streets and widenings. The building lines on these streets should also be shown on the map. Any building lines fixed for existing main streets should also be shown on the map, and a list given in a separate table, "Proposed Building Lines on existing Main Streets."

* NOTE.—To meet proposals to allow shops or other types of buildings without restriction in selected parts of a residential area.

DENSITY.

(*b*) *Density of buildings* (*that is, number of dwelling-houses to the acre and proportion of site allowed to be covered by buildings*).

(i) *Number of dwelling-houses to be allowed to the acre.*

Locality of area in which limitation applies.	Reference to marking on Map No. 2.	Approximate acreage of area.	Average number of dwelling-houses to the acre.
1.	2.	3.	4.

Proposed Method of Calculating Density.—The average number of houses per acre to be calculated over units of land to be approved by the Council, the units to be within one ownership, unless otherwise agreed, and to include in addition to private land, and private streets, half the width of any public road on which the land abuts, and, to the extent permitted by the Council, public open spaces and public allotments.

The Council to have power to permit an increase of average density in cases of difficulty in developing land on account, *e.g.* of the lay-out of streets constructed before the date of the Council's resolution deciding to prepare a scheme, or the small amount of land in the possession of any owner on that date.

(ii) *Proportion of site to be allowed to be covered by buildings.*

Example.—Subject to exceptions in the case of extensions of buildings in existence or commenced on the (the date of the resolution of the Council deciding to prepare a town planning scheme) or in other special cases, the proportion of site to be covered by buildings of various classes not to exceed that indicated in the appropriate column of the following table :—

Character of Buildings.	Dwelling-houses.	Other residential buildings, schools and shops with dwelling accommodation.	Other buildings.
1.	2.	3.	4.
Neither exceeding 30 ft. in height nor being of more than one storey above ground level.	$\frac{1}{3}$	$\frac{1}{2}$	$\frac{3}{4}$
Exceeding 30 ft. in height or being of more than one storey above ground level.	$\frac{1}{4}$	$\frac{1}{3}$	$\frac{2}{3}$

HEIGHT.

(*c*) *Height of Buildings.*

Information as to any proposed restrictions on the heights of buildings.

Example.—Except in the case of industrial buildings in the areas coloured (*i.e.* industrial areas) or, with the consent of the Council, in the case of public buildings.

(i) no part of any new building to project above a line drawn from the centre of the street in front of the building (or, where more than one street, the widest street) at an angle of 50° with the horizontal; or 45° in the case of subsidiary streets intended for residential use only.

(ii) the highest point of any new building in no case to exceed 70 feet.

For the purpose of measurement, account to be taken of parapets, but no t of chimneys, ornamental towers, turrets or any other architectural features.

(Where different heights are to be permitted in different areas, they should be shown by means of a table as in the case of the density proposals.)

OPEN SPACES.

(5) *Areas proposed to be reserved for Open Spaces or other areas not to be built upon.*

Locality of area.	Reference to marking on Map No. 2.	Approximate acreage of area.	Purpose for which area is to be reserved.	Present use.
1.	2.	3.	4.	5.

APPROPRIATIONS.

(6) *Appropriation of Commons, Open Spaces, and Allotments to other purposes.*

Description and locality of Common, Open Space or Allotments affected.	Acreage of portion proposed to be appropriated.	Purpose for which lands to be appropriated (giving number of new street or widening, where appropriation is for street purposes).	Particulars (including acreage and situation) of lands proposed to be provided in exchange.
1.	2.	3.	4.

(II.)

MODEL FORMS OF RESOLUTIONS, ADVERTISEMENTS, AND NOTICES FOR USE IN CONNECTION WITH THE PREPARATION OF TOWN PLANNING SCHEMES; ISSUED FROM THE MINISTRY OF HEALTH IN JULY, 1921.

[NOTE.—The Articles specified refer to those in the Ministry of Health (Town Planning) Regulations, 1921.]

STAGE I.—Resolution deciding to prepare a Town Planning Scheme.

FORM 1A.—Resolution deciding to prepare a town planning scheme—lands wholly within the district of the local authority preparing the scheme (Art. 3 (1)).

(Name or Number of Town Planning Scheme.)

RESOLVED that the Council in pursuance of s. 42 of the Housing, Town Planning, etc. Act, 1919, hereby decide to prepare the above Town Planning Scheme with reference to an area situate wholly within the District of , and enclosed within the inner edge of a * border on a map now produced to the Council and marked and certified by † under his hand dated the as "Map No. 1."

Dated this day of 19 .

Clerk to the Council.

* Insert colour used on map.

† *I.e.* the Clerk to the Council or other competent officer.

FORM 1B.—Resolution deciding to prepare a town planning scheme—lands extending outside the district of the local authority preparing the scheme (Art. 3 (1)).

(Name or Number of Town Planning Scheme.)

RESOLVED that the Council in pursuance of s. 42 of the Housing, Town Planning, etc. Act, 1919, hereby decide to prepare the above Town Planning Scheme with reference to an area situate partly within the District of and partly within the District of , and enclosed within the inner edge of a * border on a map now produced to the Council and marked and certified by † , under his hand dated the as "Map No. 1," and the Council hereby direct that a formal application be made to the Minister of Health to approve this resolution.

Dated this day of , 19 .

Clerk to the Council.

FORM 2A.—Advertisement of resolution deciding to prepare a town planning scheme—lands wholly within the district of the local authority preparing the scheme (Art. 3 (2)).

(Name or Number of Town Planning Scheme).

Notice is hereby given that the Council of on , 19 , passed the following resolution :—

(Here insert resolution 1A.)

And notice is hereby further given that the Map No. 1 (or a certified copy of Map No. 1 ‡) referred to in the above resolution has been deposited at and will be open to inspection by all persons interested without payment of any fee between the hours of and .

Any suggestions for the inclusion or exclusion of any lands in or from the area of the proposed scheme should be sent in writing to the Clerk to the Council before § .

Dated this day of , 19 .

Clerk to the Council.

FORM 2B.—Advertisement of resolution deciding to prepare a town planning scheme—lands extending outside the district of the local authority preparing the scheme (Art. 3 (2)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that the Council on , 19 , passed the following resolution :—

(Here insert resolution 1B.)

And notice is also given that the said Council intend after the expiration of three weeks from the date of this advertisement to apply to the Minister of Health to approve the above resolution.

And notice is hereby further given that the Map No. 1 (*or* a certified copy

* Insert colour used on map.

† *I.e.* the Clerk to the Council or other competent officer.

‡ These words to be omitted if not applicable.

§ The date specified should be not less than 21 days from the date of the first advertisement.

of Map No. 1 *) referred to in the above resolution has been deposited at and will be open to inspection by all persons interested without payment of any fee between the hours of and .

Any suggestions for the inclusion or exclusion of any lands in or from the area of the proposed scheme should be sent in writing to the Clerk to the Council before † .

Dated this day of , 19 .

Clerk to the Council.

FORM 3.—Advertisement giving notice of approval by Minister of Health of resolution deciding to prepare a town planning scheme (Art. 3 (5)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that on the day of , 19 , the Minister of Health notified his approval with * (*or* without) modifications of the resolution of the Council of dated the day of , 19 , deciding to prepare the above Town Planning Scheme with reference to an area situate partly within the District of and partly within the District of .

Dated this day of , 19 .

Clerk to the Council.

STAGE II.—Preliminary Statement of Proposals for Development.

(For form of Preliminary Statement, see Appendix D.)

FORM 4.—Advertisement giving notice of intention to adopt preliminary statement (Art. 5 (1)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that after the expiration of three weeks from the date of this advertisement the Council of propose to consider a resolution adopting a Preliminary Statement of proposals for development in connection with the above Town Planning Scheme.

A draft of the Preliminary Statement proposed to be adopted and a Map illustrating the particulars in the draft statement has been deposited at and will be open to inspection by all persons interested without payment of any fee between the hours of and .

Any objections or representations with regard to the draft Statement should be sent in writing to the Clerk to the Council before † .

Dated this day of , 19 .

Clerk to the Council.

FORM 5.—Resolution adopting preliminary statement and Map No. 2 (Art. 4 (1)).

(Name or Number of Town Planning Scheme.)

Resolved that in connection with the above Town Planning Scheme the Council adopt the Preliminary Statement of proposals for development and Map No. 2 to which the Statement refers, and direct that the Statement and Map be signed and certified by ‡ .

Dated this day of , 19 .

Clerk to the Council.

* These words to be omitted if not applicable.

† The date specified should be not less than 21 days from the date of the first advertisement.

‡ *I.e* the Clerk or other competent officer.

FORM 6.—Advertisement giving notice of approval of preliminary statement by the Minister of Health (Art. 8).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that on the day of , 19 , the Minister of Health notified his approval with (*or* without *) modifications of the Preliminary Statement of proposals for development in connection with the above Town Planning Scheme adopted by resolution of the Council on the day of , 19 .

(And notice is hereby further given that the Minister has issued an Order under s. 45 of the Housing, Town Planning, etc. Act, 1919, authorising the Council to permit the development of estates and building operations to proceed in the Area pending the preparation and approval of the Town Planning Scheme.) †

A print of the Preliminary Statement and Map. No. 2 referred to therein as approved by the Minister (and of his Orders) has been deposited at and will be open to inspection by all persons interested without payment of any fee between the hours of and .

The Council now propose to proceed forthwith with the preparation of the substantive Town Planning Scheme for submission in due course to the Minister of Health.

Dated this day of , 19 .

Clerk to the Council.

STAGE III.—Preparation and Approval of Town Planning Scheme.

FORM 7.—Resolution adopting draft town planning scheme (Art. 9 (1)).

(Name or Number of Town Planning Scheme.)

RESOLVED that the Council adopt the draft of the above Town Planning Scheme and the Map marked "Map No. 3" to which the draft scheme refers, and direct that the draft scheme and map be signed and certified by ‡ .

Dated this day of , 19 .

Clerk to the Council.

FORM 8.—Advertisement giving notice of resolution adopting draft town planning scheme (Art. 10 (1)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that the Council on the day of , 19 , passed the following resolution :—

(Here insert resolution 7.)

A print of the Draft Scheme and Map No. 3 (*or* a certified copy of Map No. 3 *) to which the scheme refers has been deposited at , and will be open to inspection by all persons interested without payment of any fee, between the hours of and .

* These words to be omitted if not applicable.

† Words in brackets to be inserted when a s. 45 Order is issued to a local authority on approval of a Preliminary Statement.

‡ *I.e.* the Clerk to the Council or other competent officer.

Any objections or representations with regard to the draft scheme or any part thereof should be sent in writing to the Clerk to the Council before * .

Dated this day of , 19 .

Clerk to the Council.

FORM 9.—Notice to be served on prescribed persons (Art. 10 (2)).

[In same terms as Form 8.]

FORM 10.—Resolution finally approving town planning scheme (Art 12 (1)).

(Name or Number of Town Planning Scheme.)

RESOLVED that the Council finally approve the above Town Planning Scheme and the Map marked "Map No. 4" to which the scheme refers, which scheme and map have been signed by † and dated the day of , 19 , and order that the said Scheme and Map be sealed with the seal of the Council and submitted to the Minister of Health for his approval.

Dated this day of , 19 .

Clerk to the Council.

FORM 11.—Advertisement giving notice of resolution finally approving town planning scheme and of submission of scheme to Minister of Health for his approval (Art. 13 (1)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that the Council on the day of , 19 , passed the following resolution :—

(*Here insert resolution—Form No.* 10.)

A print of the Scheme submitted to the Minister of Health for his approval and of Map No. 4 (*or* a certified copy of Map No. 4 ‡) to which the scheme refers has been deposited at and will be open to inspection by all persons interested without payment of any fee, between the hours of and .

Any objections or representations with regard to the Scheme or any part thereof should be sent in writing to the Secretary, Ministry of Health, Whitehall, London, S.W.1., before § .

Dated this day of , 19 .

Clerk to the Council.

FORM 12.—Advertisement giving notice of intention of the Minister of Health to approve town planning scheme (Art. 15 (1)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that on the day of , 19 , the Minister of Health notified the Council of his intention to approve with (*or* without ‡) modifications the above Town Planning Scheme adopted by the Council on the day of , 19 .

* The date specified should be not less than four weeks from the date of the first advertisement.

† *I.e.* the Clerk to the Council, or other competent officer.

‡ These words to be omitted if not applicable.

§ The date specified should be not less than 21 days from the date of the first advertisement.

A print of the Scheme in the form in which the Minister has notified his intention to approve it has been deposited at and will be open to inspection by all persons interested without payment of any fee, between the hours of and .

Dated this day of , 19 .

Clerk to the Council.

FORM 13.—Notice to owners of land included in town planning scheme of intention of the Minister of Health to approve the scheme (Art. 15 (2)).

(Name or Number of Town Planning Scheme.)

[Follow last form (No. 12) with the addition of :—]

Any owner or interested local authority desiring to object to the approval of the Scheme by the Minister of Health may within 21 days from the service of this notice send any objections or representations in writing with the grounds thereof to the Secretary, Ministry of Health, Whitehall, London, S.W.1.

Dated this day of , 19 .

Clerk to the Council.

FORM 14.—Advertisement giving notice of approval of town planning scheme by the Minister of Health (Art. 16 (2)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that by an Order dated the day of , 19 , the Minister of Health finally approved with (*or* without *) modifications the above Town Planning Scheme, adopted by the Council by a resolution dated the day of , 19 .

A copy of the Order of the Minister finally approving the scheme has been deposited at , and will be open to inspection by all persons interested without payment of any fee, between the hours of and .

Dated this day of , 19 .

Clerk to the Council.

FORM 15.—Notice to prescribed persons enclosing copy of the Order of the Minister of Health approving town planning scheme (Art. 16 (2)).

(Name or Number of Town Planning Scheme.)

Notice is hereby given that by an Order dated the day of , 19 , the Minister of Health finally approved with (*or* without *) modifications the above Town Planning Scheme, and a copy of the Order is enclosed herewith.

A copy of the Map referred to in the Order may be inspected at without payment of any fee, between the hours of and .

Dated this day of , 19 .

Clerk to the Council.

* These words to be omitted if not applicable.

(III.)

FORMS REQUIRED BY THE MINISTER OF HEALTH TO BE USED UNDER THE FIRST, THIRD, AND FIFTH SCHEDULES TO THE TOWN PLANNING REGULATIONS, 1921.

(i) *First Schedule, paragraphs* (3) *and* (4) (*see* p. 184).

FORM.

Name of Local Authority

Title of Town Planning Scheme

Particulars required.	Reply.
1. Acreage of area to which the resolution extends :—	
(*a*) inside the district of the local authority,	
(*b*) outside the district of the local authority,	
2. General description of the area.	
3. Extent to which area is in course of development or likely to be developed, and nature of development in process or expected, distinguishing, where necessary, between different forms of development in different areas (*e.g.* works, working-class or other houses, etc., etc.).	
4. Reasons for including—	
(*a*) land already built upon, or	
(*b*) land not likely to be used for building purposes, if any included.	
5. Where area includes land outside the district of the local authority passing the resolution—	
(*a*) Reasons for such inclusion.	
(*b*) The local authority proposed to be made responsible for enforcing the observance of the scheme and the execution of works under it outside the district.	
6. (*a*) Whether any Crown lands are likely to be affected by the scheme.	
(*b*) If so, give particulars of these Crown lands and any suggestions with regard to their development.	

Signature — Clerk to the Local Authority.

Date — 19 .

(ii) *Third Schedule, paragraph* (2) (see p. 185).

FORM.

Name of Local Authority

Title of Town Planning Scheme

1. Particulars of any land within the area belonging to the local authority preparing the town planning scheme, and of the purposes for which, and the powers under which such land was acquired or is held, and of any proposals with regard to its use for any other purposes under the scheme.

Particulars of land.	Purposes for which and powers under which acquired.*	Proposed uses under Scheme.

2. Similar particulars in regard to land within the area belonging to any other local authority.

Particulars of land.	Purposes for which and powers under which acquired.	Proposed uses under Scheme.

3. Particulars of any housing scheme in course of execution or to be executed in the area under the Housing Acts, 1890 to 1919.

4. Particulars of any monuments or ancient monuments within the meaning of the Ancient Monuments Consolidation and Amendment Act, 1913, situate within the area, and of the manner in which they would be affected by the scheme.

Signature Date 19 .
Clerk to the Local Authority.

(iii) *Fifth Schedule, paragraph* (5) (see p. 186).

FORM.

Name of Local Authority

Title of Town Planning Scheme

1. Particulars of land or premises proposed to be acquired under the scheme and of any agreements (including provisional agreements) which have been made in respect of the land or premises in the case of :—

(*a*) Land, etc., to be acquired by the local authority submitting the scheme.

Particulars and proposed use of land, etc., to be acquired.	Essential particulars of agreements.

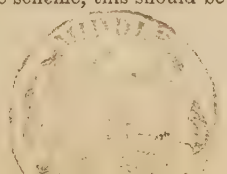
(*b*) Land, etc., to be acquired by any other local authority.

2. Particulars (as far as reasonably available) of any works which are to be executed under the scheme.
(*a*) by any local authority,
(*b*) otherwise.

NOTE.—It should be indicated which, if any, of the works are to be undertaken immediately or in the near future.

3. Particulars of the cost (so far as can reasonably be estimated) of development under the scheme so far as the cost is to be borne by (*a*) the local authority making the scheme, and (*b*) any other local authority, under the following heads :—	Local authority making application. £	Any other local authority. £
Expenditure :—		
(*a*) Purchase of land for streets.		
(*b*) Purchase of land for open spaces.		
(*c*) Purchase of land for other purposes (specifying them).		

* Where the land is subject to any trusts or covenants that would conflict with a proposed change of use under the scheme, this should be stated.



	£	£
(*d*) Purchase of buildings.		
(*e*) Demolition or alteration of buildings.		
(*f*) Compensation in respect of property injuriously affected by the scheme.		
(*g*) Making or alteration of roads, streets, or ways.		
(*h*) Sewerage or drainage.		
(*i*) Cost of preparing the scheme.		
(*j*) Any other purpose (specifying them).		
Total		
Receipts :—		
(*a*) In respect of property increased increased in value.		
(*b*) From street work charges.		
(*c*) From other sources (specifying them).		
Total		
Net Total		

4. Particulars :—

(1) of any land within the area of the scheme, forming part of any common, open space, or allotment within the meaning of s. 73 of the Housing, Town Planning, etc. Act, 1909;

(2) of any part of that land to be acquired or appropriated to any other purpose under the scheme ;

(3) of any land proposed to be given in exchange for the land so be to acquired or appropriated.

5. Particulars of :—

(*a*) Acreage of the district of the local authority.

(*b*) Population according to the last census.

(*c*) Rateable value for the purposes of the poor rate.

(*d*) Amount in the pound of total rate (including poor rate) levied during the three last preceding financial years.

NOTE.—If it is proposed that the cost of the scheme to be borne by the local authority shall be charged upon any contributory place or places in their district the particulars required under (5) should be given with respect to that place or places only, and the place or places should be specified.

If any part of the cost of the scheme is expected to be borne by a local authority other than the local authority making the scheme, the first-mentioned local authority should be requested to supply a statement showing with regard to their district the several particulars specified under heading (5).

6. Reference to legal provisions in operation in the area which it is proposed to suspend, and the reasons which are considered to justify the suspension :—

(*a*) Provision in Public General Acts.

(*b*) Provisions in Local Acts.

(*c*) Provisions in Bye-laws, Regulations, or other provisions in operation in the area.

Signature

Clerk to the Local Authority.

Date 19 .

(IV.)

NOTATION FOR TOWN PLANNING MAPS (ISSUED BY THE MINISTER OF HEALTH, FEBRUARY, 1923).

[*The object of the notation prescribed below is to standardise the method of illustrating the main features required to be shown on a town planning map. It is not intended to be exhaustive, and other colours or hatchings may require to be used to indicate additional features dealt with in the town planning scheme.*

The map used should be an ordnance map and should be corrected up to date.]

AREAS.

1. The area of the scheme to be that within the *inner* edge of a boundary line coloured dark blue.

2. Areas excluded (if any) to be edged and hatched black.

3. Boundaries between districts of adjoining authorities to be clearly indicated by black dots and dashes, thus:—

—·—·—·

The form of hatching selected for an area to be varied, where necessary, so as to indicate the kinds of building allowed in that area and the conditions (*e.g.* special consent) on which they are allowed.

Purple edgings and thin purple hatchings to be used in areas which are primarily industrial or in which industrial buildings can be erected without restriction and grey edgings and broad grey hatchings in other cases (*e.g.* shopping areas).

EXAMPLES.

The character zones quoted as examples in the Table given in 4 (*a*) of the Model Preliminary Statement might accordingly be indicated as follows :—

Example I. (Residential).—Density colour or colours only.

(Where shops, etc., may be erected without consent—grey edging and broad grey single hatching.)

Example II. (General).—Purple edging and thin purple single hatching.

Example III. (Special business).—Grey edging and broad grey cross hatching.

Example IV. (Special industrial).—Purple edging and thin purple cross hatching.

HEIGHT OF BUILDINGS.

12. It will generally be necessary to make use of a separate map to show height limitations, where these differ in different areas. A map on the scale of 6 inches to the mile will usually be found sufficient.

RESERVED AREAS.

13. Lands reserved under the scheme as :—

(*a*) Private Open Spaces to be coloured light green and edged dark green.

(*b*) Public Open Spaces to be coloured light green and hatched dark green.

(Existing Public Open Spaces to be coloured dark green.)

(*c*) Allotments to be coloured light burnt sienna and hatched green.

(Existing Public Allotments to be coloured burnt sienna and edged dark green.)

APPENDIX D.

TABLE SUMMARISING PROCEDURE UNDER MINISTRY OF HEALTH (TOWN PLANNING) REGULATIONS, 1921.

STAGE.	TIME.	REGULATION.	FORM.
(1) Resolution deciding to prepare scheme.		3.	1A on p. 194. 1B on p. 195.
(2) Notice thereof by advertisement.	As soon as may be after passing resolution.	3 (2).	2A on p. 195. 2B on p. 195.
(3) Sending of particulars to Minister of Health. (4) Map No. 1 to be open for inspection.	As soon as may be.	3 (3) and first schedule.	See p. 200.
(5) Sending of copy resolution and (if required) Map No. 1 to interested local authority.		3 (4).	

Stage.	Time.	Regulation.	Form.
(6) Notice of Minister's approval of resolution where necessary.	As soon as may be after date of approval.	3 (5).	3 on p. 196.
(7) Preparation of preliminary statement.	During six months of resolution (or approval where necessary).	4 and second schedule.	See p. 191.
(8) Notice by advertisement of intention to adopt preliminary statement.		5.	4 on p. 196.
(9) Sending of draft preliminary statement and (if required) map to interested local authority.		5 (3).	
(10) Draft preliminary statement and illustrative map to be open for inspection.			
(11) Taking into consideration objections and representations.		5 (4).	
(12) Adoption by resolution of preliminary statement.	Within six months, as in (7).	4.	5 on p. 196
(13) Sending of particulars to Minister of Health.	As soon as may be after adoption.	6 (1) and third schedule.	See p. 200.
(14) Sending of copy resolution to local authority where necessary.		6 (2).	
(15) Notification to owner of land omitted from preliminary statement.		6 (3).	
(16) Where preliminary statement disapproved, preparation of another.	During three months of notification of disapproval.	7 (2).	See p. 191.
(17) Where ditto, adoption by resolution of another.	Within three months, as in (16).	7 (2).	5 on p. 196.
(18) Where ditto, repeat (13), (14), and (15).		7 (2).	
(19) Where preliminary statement approved, notice thereof by advertisement.	As soon as may be after notification of approval.	8.	6 on p. 197.
(20) Preparation of draft scheme.	During twelve months of approval of preliminary statement.	9 and fourth schedule.	See pp. 209 to 263.
(21) Adoption by resolution of draft scheme.	Within twelve months, as in (20).	9.	7 on p. 197.
(22) Notice thereof by advertisement.	Forthwith.	10 (1).	8 on p. 197.
(23) Draft scheme and Map No. 3 to be open for inspection.			
(24) Serving of notice on prescribed persons.	As soon as may be after adoption of draft scheme.	10 (2).	8 on p. 197 (Same terms).

Stage.	Time.	Regulation.	Form.
(25) Sending of copy resolution and scheme to Minister.	Forthwith.	10 (3).	
(26) Taking into consideration representations and objections.		11.	
(27) Final approval by resolution of scheme.	Within six months of adoption of draft scheme.	12 (1).	10 on p. 198.
(28) Submission of scheme with information to Minister.	As soon as may be thereafter.	12 (2) and fifth schedule.	
(29) Sending of print of scheme to interested local authority.		12 (3).	
(30) Notice of submission by advertisement.	Forthwith.	13 (1).	11 on p. 198.
(31) Submitted scheme and Map No. 4 to be open for inspection.			
(32) Sending of copy advertisement to Minister.	As soon as may be after publication.	13 (2).	
(33) Public inquiry.		14 (1).	
(34) Where scheme disapproved, preparation of another draft scheme.	During six months of notification of disapproval.	14 (3) and fourth schedule.	See pp. 209 to 263.
(35) Where ditto, adoption of another draft scheme.	Within six months, as in (34).	14 (3).	7 on p. 197.
(36) Where ditto, repeat (22) to (32) inclusive.		14 (3).	
(37) Where scheme approved, notice thereof by advertisement.	On receipt of notification of approval.	15 (1).	12 on p. 198.
(38) Scheme to be open for inspection.			
(39) Service of notice on owners of land and interested local authority.		15 (2).	13 on p. 199.
(40) Sending of copies of advertisement and notice to Minister.		15 (3).	
(41) Where scheme finally approved, notice thereof by advertisement.	On receipt of order finally approving scheme.	16 (2).	14 on p. 199.
(42) Order of Minister to be open for inspection.			
(43) Where scheme finally approved, service of copy order on prescribed persons.	Ditto.	16 (2).	15 on p. 199.
(44) Where ditto, sending of copy advertisement to Minister.		16 (3).	

Note.—Under regulation 19 (1) the Minister of Health may extend any period; and under regulation 19 (2) the local authority may extend any time for receiving suggestions, objections, and representations.

APPENDIX E.

MODEL CLAUSES FOR USE IN THE PREPARATION OF SCHEMES, WITH ANNOTATIONS.

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MODEL CLAUSES FOR USE IN THE PREPARATION OF SCHEMES (ISSUED FROM THE MINISTRY OF HEALTH AND DATED FEBRUARY, 1923).

NOTE.—*An Index to the Model Clauses appears under that heading on p.* 207.

CLAUSES (*a*).

PART I.—GENERAL.

INTERPRETATION.

1. (1) In this Scheme, unless the context otherwise requires, the following words and expressions have the respective meanings (*b*) hereby assigned to them :—

" The Council " means the * ;

" The Borough " † means the * ;

" The Minister " means the Minister of Health ;

" The Act of 1919 " means the Housing, Town Planning, etc. Act, 1919 ;

" The Act of 1909 " means the Housing, Town Planning, etc. Act, 1909, as amended by the Act of 1919 ;

" The Map " means the map (*c*) which has been prepared in duplicate, each of such duplicates being sealed with the official seal of the Minister and with the official seal of the Council, and marked " Map referred to in the Town Planning Scheme," of which duplicates one is deposited in the office of the Minister and the other in the office of the Clerk to the Council ;

" The Area " means the portions of the borough described in clause 2 ;

" The Bye-laws " mean the provisions of any local Acts, regulations or bye-laws relating to new streets and buildings for the time being in force in the borough ;

" Owner " has the same meaning as in the Public Health Act, 1875 (*d*).

(2) The Interpretation Act, 1889, applies to the interpretation of this Scheme as it applies to the interpretation of an Act of Parliament (*e*).

(*a*) In an Explanatory Memorandum officially issued with the model clauses it is stated that " the insertion of many of the clauses in a scheme will no doubt often be unnecessary, but, so far as the clauses contain the provisions which it is desired to insert, it is intended that they should be regarded as the settled form for the purpose and utilised accordingly, with any necessary adaptations

* Insert appropriate description. † Or District.

to meet the special circumstances of the particular scheme. Moreover, the issue of the clauses should not be regarded as prejudicing the Minister's view as to the propriety of including in any scheme provisions relating to any particular subject."

(*b*) An example of an interpretation clause is to be found in each of the thirteen town planning schemes approved by the Minister of Health, and in operation at the date of publication. They are to be found numbered as clause one in every case. There are no examples among the existing schemes of subsidiary interpretation clauses such as model clauses 4 and 17.

(*c*) This is Map No. 4. See article 12 of the Regulations of 1921, p. 180.

(*d*) Paragraph 2 of the explanatory memorandum observes "there would not appear to be anything in this part of the models which calls for comment or explanation, except the definition of 'owner' (clause 1). As will be seen, the Public Health Act definition has been adopted, but wherever in the text a more extended definition is required (*e.g.* in the clauses relating to the right of entry on to land for the execution of street works, the acquisition of land for open spaces, etc.), the term 'persons interested in' has been used." "Owner" is defined in s. 4 of the Public Health Act, 1875, as meaning "the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person or who would so receive the same if such lands or premises were let at a rack-rent." The "extended definition" referred to in the memorandum is not effected in the existing schemes in the same way as in the model clauses, but two other and distinct methods are employed. For example, in the Ruislip-Northwood Town Planning Scheme (September, 1914) the meaning of "owner" in the Lands Clauses Acts is applied to clauses of the character exemplified in the memorandum, that meaning being no doubt rather narrower than that which the term "persons interested in" might be understood to convey, but nevertheless representing the persons from whom the land, if necessary, would be acquired by virtue of s. 60 of the Act of 1909 and Part III. of the Housing of the Working Classes Act, 1890. Section 3 of the Lands Clauses Consolidation Act, 1845, provides that "the word 'owner' shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking," the effect of s. 7 of the same Act being to remove various disabilities (see Chap. VII. p. 61). On the other hand, in the Luton Town Planning Scheme (November, 1922) the Public Health Act definition is applied to certain specified clauses, with a paragraph immediately preceding, providing that "the several words or expressions which are not defined or used in Part II. of the Act of 1909, but which are defined in the Public Health Act, 1875, shall (subject as hereinafter provided) have the same several meanings as are specified in the latter Act." The word "owners" is used more than once in Part II. of the Act of 1909—*e.g.* in s. 54 (2) and again in s. 56 (2), where the expression is "owners and other persons interested in the land." There seems to be no definition of the word "owner" as so used: the definition in s. 49 (2) of the Act of 1909 is in substitution for that contained in s. 29 of the Housing of the Working Classes Act, 1890, and s. 76 of the Act of 1909 does not include Part II. in the enactments to be construed as one with the Housing of the Working Classes Acts.

(*e*) The more important words defined by the Interpretation Act, 1889, which are used in the model clauses are "commence" (clause 65—s. 36), "land" (clause 5, *inter alia*—s. 3), "month" (clause 6, *inter alia*—s. 3), "person" (clause 5, *inter alia*—ss. 2 and 19), and "writing" (clause 56—s. 20). The Act of 1889 contains, moreover, in s. 38 important provisions regulating the effect of an amending or revoking scheme. The interpretations contained in the Act will also, by virtue of s. 31, apply to any order made under the provisions of the scheme, *e.g.* under model clause 29.

Area of Scheme.

2. The area to which this Scheme applies (*a*) shall consist of those parts of the borough (*b*) which lie within the inner edge of the boundary line coloured dark blue on the map, excluding the parts edged black and hatched in black lines (*c*) on the map, and any reference in this scheme to land is limited to land in the area.

(*a*) This definition is included in pursuance of the requirements as to special provisions contained in s. 55 (2) of the Act of 1909.

(*b*) The model clauses will need modification when applied to a scheme covering an area within the jurisdiction of more than one local authority. See the notes on the following clause.

(*c*) See paragraphs 1 and 2 of the system prescribed for the notation of town planning maps (p. 203). A concrete example of an area from which certain parts are excluded is to be found in the Luton Town Planning Scheme—see clause 3 of that scheme, and the map to which the scheme refers.

Responsible Authority.

3. The Council shall be the authority responsible for enforcing the observance of this Scheme and for the execution of any works which under this scheme or Part II. of the Act of 1909 are to be executed by a local authority (*a*).

(*a*) This definition is included in pursuance of the requirements as to special provisions contained in s. 55 (2) of the Act of 1909. Where the area covers the districts of more than one local authority, it will be necessary to make suitable modifications of the model clauses. Four of the existing schemes—viz. the Ruislip-Northwood Town Planning Scheme, the Birmingham (North Yardley and Stechford) Town Planning Scheme, the Hunslet (Templenewsam) Town Planning Scheme, and the Luton Town Planning Scheme—are to be administered by more than one responsible authority. The clause defining "responsible authority" in the latest of these schemes—the Luton Town Planning Scheme, clause 2—is as follows: "The authority responsible for enforcing the observance of this scheme, and for the execution of any works which under this scheme or Part II. of the Act of 1909, are to be executed by a local authority shall be as follows: (1) In that part of the area which is within the Borough—The Mayor, Aldermen and Burgesses of the Borough; (2) In that part of the area which is within the district—The Rural District Council of Luton." The Birmingham (North Yardley and Stechford) Town Planning Scheme is in this connection of somewhat special interest, as it deals not only with an area within the jurisdictions of the Corporation of Birmingham and the Meriden Rural District Council, but also provides machinery in clauses 2 and 5 for providing for the widening of certain main roads in the rural district, the Warwickshire County Council being precluded from being a responsible authority by s. 65 of the Act of 1909.

PART II.—STREETS.

Note.—*If the procedure of the Private Street Works Act*, 1892, *is adopted, the words printed in italics and enclosed in square brackets should be deleted from the text. If the procedure of the Public Health*

Act, 1875, *is adopted, the words printed in italics and not so enclosed should be deleted and the words in the square brackets retained* (*a*).

INTERPRETATION (*b*).

4. In this Part of the Scheme, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them :—

" Street " includes a part of a street ;

" The Act " means the *Private Street Works Act*, 1892 [*Public Health Act*, 1875] ;

" Private street " means a street within the meaning of the Act [*not being a highway repairable by the inhabitants at large*] ;

" Incidental Works " means any slopes, approaches, embankments, cuttings, retaining walls, bridges, arches, girders, culverts, drains, or other works necessary and incidental to the construction of a street, and includes any works required for fencing the street ;

" Street Works " includes *all private street works as defined in section* 6 (*c*) *of the Act, including works which the Council are empowered to do by section* 9 (*d*) *of the Act*, [*the works referred to in section* 150 (*e*) *of the Act*,] and the execution of any incidental works and of any works required for planting a street with grass, trees, or shrubs, and erecting guards therefor, or treating it in other suitable manner ;

" The making " of a street means the execution of all necessary street works from the commencement to the final completion of the street (*f*) ;

A " bye-law " street means a street of a width of * feet with a carriageway of a width of * feet (*g*), constructed upon such levels, with such gradients, and otherwise as if the street in connection with which the term is used were constructed under the bye-laws, and in accordance with such a specification as would ordinarily be required by the Council as a condition of declaring it to be a highway repairable by the inhabitants at large.

[*An apportionment of the cost of street works against any land or premises means an apportionment of the cost according to the frontage of the land or premises under section* 150 (*h*) *of the Act, and recovery of the cost means recovery in a summary manner or by means of a private improvement rate under section* 213 (*i*) *of the Act.*]

(*a*) In the existing schemes the usual course has been to introduce special machinery for the apportionment and recovery of expenses. In the model clauses a choice is offered between the Public Health Act and Private Street Works Act procedures. The most important difference between the two procedures is that under the Public Health Act an option is given to the owners or occupiers to do the work themselves, the local authority only acting in their

* The ordinary bye-law width.

default; whereas under the Private Street Works Act the works must of necessity be executed by the authority. Another point of distinction is that the Public Health Act provides for apportionment according to frontage only, while the Private Street Works Act (s. 10) enables the authority, if they think just, to have regard to degree of benefit and the amount and value of work already done. The provisions of the Act of 1892 are more elaborated than the relevant provisions of the Act of 1875, and are generally preferred as constituting the more practicable procedure. The Act of 1892 may only be adopted by the council of an urban district, but presumably this would not prevent their being applied to a rural district by a town planning scheme.

(*b*) See note (*b*) to model clause 1 on p. 210.

(*c*) Section 6 of the Private Street Works Act, 1892, defines "private street works" as meaning "to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street."

(*d*) Sub-section 1 of s. 9 of the Private Street Works Act, 1892, reads: "The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively."

(*e*) The material words in s. 150 of the Public Health Act, 1875, are: "Where any street within any urban district (not being a highway repairable by the inhabitants at large), or the carriageway, footway, or any other part of such street is not sewered, levelled, paved, metalled, flagged, channelled, and made good or is not lighted to the satisfaction of the urban authority, such authority may by notice addressed to the respective owners or occupiers . . . require them to sewer, level, pave, metal, flag, channel, or make good or to provide proper means for lighting the same within a time to be specified in such notice."

(*f*) In the earlier existing schemes, a distinction is drawn between the "commencement" and "completion" of a street. For example, clause 5 of the Quinton, Harborne, and Edgbaston Town Planning Scheme, after leaving the time for the commencement of certain new streets to the discretion of the corporation (subject to appeal by a person aggrieved by delay), provides as follows: "Streets shall be deemed to have been commenced within the meaning of this clause as soon as they are cut or laid out to formation level, and the bottom layer of the foundation has been laid thereon." A later clause (clause 6) requires the corporation to complete the construction of the carriage-way and footways upon the development of 75 per cent. of the total frontage to the street.

(*g*) In view of the possible variation of bye-laws after the operation of a scheme has commenced, it may seem preferable to avoid, if possible, the definite fixing of widths as suggested in the model clause.

(*h*) Section 150 of the Public Health Act, 1875, enables an urban authority, after executing private street works under that section, to "recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority or (in case of dispute) by arbitration in manner provided by this Act." In the draft South Birmingham Scheme, in the form approved by the Minister under article 18 of the Town Planning Procedure Regulations (Preparation of Schemes by Local Authorities), 1914, special machinery for the recovery of street expenses is provided in clause 8, by which apportionment is to be made not only in respect of premises fronting, adjoining, or abutting, but also "upon any other lands and premises, access to which is obtained from such street or widening (including

the existing street) or part thereof through a court, passage, or otherwise, and which in their " (*i.e.* the corporation's) " opinion will be benefited by the construction of such street or widening or such part thereof. . . ." *Cf.* s. 10 of the Private Street Works Act, 1892.

(*i*) The private improvement rate is to be for such an amount " as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine." Some doubt exists whether an apportionment should precede the levying of the rate—see Lumley's Public Health, 9th ed., vol. i, p. 314.

Application of *Private Street Works Act*, 1892 [*Public Health Act*, 1875].

5. Subject to the provisions of this Scheme, *the Act* [*the provisions of the Act relating to private streets*] shall apply to and have effect in the area with the modifications set out below :—

(1) The Act shall apply to all street works as defined in this Part of the Scheme (*a*).

(2) In the case of any private street (*b*) declared to be a street under clause 6 :—

(*a*) Where street works are executed by the Council upon or in connection with the street, the cost of any works executed by the Council and required for fencing the street or for constructing a bridge over or under any railway, river or canal, and any expense in excess of the cost of constructing upon the site of the street a bye-law street (*c*) shall be borne by the Council and shall not be apportioned against any premises :

(*b*) In making an apportionment against any premises of the cost of street works executed upon or in connection with the street, account shall be taken of any apportionment previously made against the premises and of the amount and value of any works, other than temporary works, previously done by any owner of the premises upon or in connection with the street (*d*) ;

(*c*) *The grounds of objection set out in section 7 of the Act* (*e*) *shall be deemed to include an objection upon the ground that expenses which under this clause are to be borne by the Council have been apportioned against the premises of the objector ;*

[*Any dispute arising out of the provisions of paragraphs* (*a*) *and* (*b*) *of this sub-clause shall be determined by arbitration in the manner provided by the Act.*] (*f*)

(*d*) Any sum apportionable by the Council under the Act as modified by this Scheme in respect of the cost of the execution of street works may be varied by agreement (*g*) between the Council and the person (*h*) chargeable, and for giving effect to any such agreement the Council may, if they think

fit, themselves defray the whole or a part of the sum so apportionable ;

(*e*) *The provisions of section* 20 *of the Act* (*i*) *which require the Council, on the application of the persons therein mentioned, to declare a street to be a highway repairable by the inhabitants at large shall apply to the street as soon as it has been made by the Council or in accordance with the specification of the Council under* (*j*) *clause* 10 ;

[*If any new street has been made by the Council or in accordance with the specification of the Council under* (*j*) *clause* 10, *then, on the application in writing of the majority in number of the owners of the houses and land in the street, the Council shall exercise the power conferred on them by section* 152 *of the Act* (*k*) *of declaring the street to be a highway repairable by the inhabitants at large.*]

(*f*) Where street works are executed by the Council upon or in connection with the street, no expenses incurred in executing the street works and apportioned against land which is rated as agricultural land only shall be recoverable until the land (*l*) becomes rated otherwise than as agricultural land (*m*) ;

If a part only of such land becomes rated otherwise than as agricultural land, then only the portion of the expenses attributable to that part shall become recoverable ;

Interest shall not be payable to the Council on any monies in respect of the time during which under this sub-clause they are irrecoverable ;

(*g*) The Council may, if they think fit, postpone the date on which any expenses which they are entitled to recover from any person under the Act as modified by this Scheme become recoverable (*n*).

(3) In the case of any other private street which the Council require under clause 10 to be constructed in accordance with a specification involving any greater cost than the cost of constructing on the site thereof a bye-law street, the modifications set out in this clause, other than modifications 2 (*f*) and 2 (*g*), shall have effect.

(*a*) The definition of "street works" in model clause 4 does not include the widening of a street, unless perhaps in exceptional circumstances under s. 9 of the Private Street Works Act, 1892. See notes (*c*), (*d*), and (*e*) to model clause 4. It would appear, however, from the heading to clause 6 and the introductory words to clause 7 that the land required for a widening is to be treated as a "street"; and that accordingly works done upon such land are "street works."

(*b*) Whether a street when declared is to be "private" or otherwise is determined by sub-clause 2 (*a*) of model clause 6 on p. 217.

(*c*) In the case of a widening the existing highway, together with the land forming the site of the widening, is to be treated as the new street (see model clause 7 (1)); and the charge on the frontagers for the widening (when any charge can be imposed) will accordingly be the cost of bringing the highway to bye-law standard as regards works and width.

(*d*) This sub-clause constitutes an important deviation from the procedure followed under the Public Health Act, 1875, and repeats a similar provision in s. 10 of the Private Street Works Act, 1892.

(*e*) There are six grounds of objection set out in s. 7 of the Private Street Works Act, 1892, viz. :—

"(*a*) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act ;

"(*b*) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large ;

"(*c*) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate ;

"(*d*) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive ;

"(*e*) That any premises ought to be excluded from or inserted in the provisional apportionment ;

"(*f*) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises."

(*f*) Arbitration under the Public Health Act, 1875, is regulated by ss. 179, 180, and 181 of that Act. No doubt the provisions of the Arbitration Act, 1889, would (by virtue of s. 24 of that Act) also apply. It should be noted that s. 181 of the Public Health Act, 1875, places it at the option of either party to require any dispute relating to an amount less than twenty pounds to be determined before a court of summary jurisdiction.

(*g*) Agreements are to be made subject to the provisions of model clause 41 —see p. 248.

(*h*) "Person" is defined in the Interpretation Act, 1889, as including, unless the contrary intention appears, a body corporate (ss. 2 and 19). The provisions of the sub-clause avoid the decision in *Dryden* v. *Overseers of Putney* (1876), 1 Ex. D. 223.

(*i*) The application is to be in writing, and is to be made by "the greater part in value of the owners of the houses and land" in the street (Private Street Works Act, 1892, s. 20). In several of the existing schemes, a highway becomes maintainable by the public when 75 per cent. of the total frontage to the street has been built up and appropriated as curtilages for buildings—*e.g.* clause 13 (3) of the Luton Town Planning Scheme. Clause 11 of the North Bromsgrove (Rubery) Town Planning Scheme fixes the proportion as low as 50 per cent.

(*j*) This is regulated by sub-clause (2) of model clause 10 on p. 221. See the note thereon.

(*k*) Under s. 152 of the Public Health Act, 1875, the declaration is to be made by notice in writing put up in any part of the street, and it is open for the proprietor of the street or a majority of such proprietors to object within one month, whereupon the declaration becomes inoperative. See model clause 1 as to the meaning of "owner" ; the word "proprietor" is probably equivalent (*Rossiter* v. *Miller* (1877), 5 Ch. D. 648 ; 46 L. J. Ch. 228 ; 36 L. T. (N.S.) 304 ; 25 W. R. 890).

(*l*) "Land" is defined in the Interpretation Act, 1889, as including

"messuages, tenements, and hereditaments, houses, and buildings of any tenure." See s. 3 of that Act.

(*m*) The incidence of the expenses whenever the land becomes rated "otherwise than as agricultural land" is similar to the arrangement in several of the earlier existing schemes. In the larger industrial towns, however, the provision of athletic and other grounds for employees may well be encouraged, and in a recent draft scheme the words "unless and until the lands and premises . . . have been appropriated as sites or curtilages for buildings or for purposes of monetary gain other than agriculture or market gardening" have been suggested. Under the model clause, however, a suitable adjustment might in such circumstances be made under sub-clause (2) (*g*).

(*n*) See note (*d*) above.

Sites of New Streets and Widenings.

6. (1) The purposes of this Scheme shall include the execution of street works upon the lands coloured pink on the map and the execution of incidental works upon adjoining land (*a*).

(2) (*a*) The Council may declare any land coloured pink on the map to be a street, after giving not less than three months' notice of their intention so to do to the persons interested in the land.

The land so declared shall thereupon, in the case of land numbered on the map, be deemed to be a highway repairable by the inhabitants at large and, in the case of any other land, be deemed to be a private street and to have been dedicated to the public, and the Council may enter (*b*) upon such highway or private street and execute any street works accordingly.

(*b*) The Council may, after giving not less than three months' (*c*) notice to the persons interested in any land which adjoins any of the land coloured pink on the map and is required for the purpose of executing any incidental works, enter upon such land and execute such works (*b*).

(*c*) So far as may be necessary for the purpose of executing street works the Council may demolish or alter any buildings or other works on the aforesaid lands (*d*).

(*d*) Nothing in this sub-clause shall be deemed to empower the Council to enter otherwise than by agreement upon any land which under section 45 of the Act of 1909 (*e*) as applied by section 60 of that Act they are prevented from acquiring compulsorily or to enter whether by agreement or otherwise upon any land the acquisition of which is prohibited under those sections.

(3) Where any land coloured pink on the map becomes, by declaration under this clause, a private street, the Council may declare any adjoining land belonging to them and required for the purpose of executing incidental works to be, and the same shall thereupon be deemed to be, a part of the private street (*f*).

(4) (*a*) The Council shall have the same responsibility for maintaining any works executed by them upon or in connection with

any private street declared to be a street under this clause or required under clause 10 to be constructed in accordance with a specification involving any greater cost than the cost of constructing on the site thereof a bye-law street as they would have if the street were a highway repairable by the inhabitants at large (*g*).

(*b*) The Council may at any time, after giving reasonable notice to the owner, enter upon land forming the site of any incidental works for the purpose of maintaining such works.

(*a*) Definitions of "street works" and "incidental works" are contained in model clause 4. It should be noticed that apparently the "adjoining land" need not be distinguished on the map. The model clause contemplates the execution of the works by the authority, and in that resembles the general intention to be found in the existing schemes. In the case of the Ruislip-Northwood Town Planning Scheme, however, clause 6 (*b*) of the scheme provides for widenings to take place as and when plans are submitted for the erection of new buildings in the street, when the council may require the street to be widened to the required width; the following sub-clause (*c*) provides, however, that the council may on notice themselves carry out the work of widening. A minor modification in the site of a street may be effected under model clause 43.

(*b*) The model clause is the first example of a provision enabling entry by declaration of the land to be dedicated to the public. Entry upon notice without previous purchase is provided for (*inter alia*) by clause 6 (*c*) of the Ruislip-Northwood Town Planning Scheme referred to above, and by clause 5 (*c*) of the Birmingham (North Yardley and Stechford) Town Planning Scheme. In these cases it appears optional for the authority to purchase the site of the street or widening, or to leave the soil vested in the private owners (as is ordinarily the case with highways generally) paying compensation in lieu of purchase-money. In the earliest schemes, however, it was apparently contemplated that the authority should gain access to land for the purposes of street works by purchase only. See also note (*e*) below.

(*c*) The word "month" is defined in the Interpretation Act, 1889, as "calendar month"—s. 3.

(*d*) The fourth schedule of the Housing, Town Planning, etc. Act, 1909 (see p. 166), specially specifies the "power of the responsible authority to remove, alter or demolish any obstructive work" as a matter to be dealt with in town planning schemes.

(*e*) The provisions of s. 45 are set out on p. 152, and are considered at length on pp. 66 to 68.

(*f*) In the explanatory memorandum the following observation is made (paragraph 8): "The fact that the authority purchase instead of exercising the right of entry given by clause 6 will not, of course, debar them from declaring the site of a street, when purchased, to be a private street if the street in question is included in the category of those in respect of which charges may be imposed. It was felt, however, that difficulties might arise if the authority purchased any adjoining land required for the execution of incidental works as they might thereby themselves become frontagers to the street and so incapable of recovering street charges. A provision has therefore been inserted (clause 6 (3)) empowering the authority to declare any such adjoining land which belongs to them to be a private street."

It will be observed that the declaration may only be made in respect of land belonging to the council, who must therefore have acquired it before declaring it part of the private street.

(*g*) Generally, it will be observed that the model clauses do not require the authority to comply with certain definite street cross-sections, as exemplified by Sheet A in the Quinton, Harborne, and Edgbaston Scheme and the East Birmingham Scheme. Clause 5 in each of those schemes provided, moreover, that the authority might (until the completed work was required) do no more than "commence" the street—streets being deemed to have been commenced "as soon as they were cut or laid out to formation level, and the bottom layer of the foundation had been laid thereon." In this connection, the explanatory memorandum accompanying the model clauses has the following observation: "Where the authority desire to construct only a portion of the street or to lay down a temporary surface in the first instance, with the intention of completing the construction of the street at a later date, their powers to execute any or all of the street works authorised by the Private Street Works Act or the Public Health Act will enable them to do so."

Widenings Chargeable upon Frontagers.

7. If any of the land coloured pink on the map which abuts on, and is intended to form the site of a widening of, an existing highway is declared under clause 6 to be a private street (*a*), then—

(1) The part of the existing highway upon which the land abuts shall, as to its whole width, be deemed to be a part of the private street;

(2) (*a*) Where the existing highway is a highway repairable by the inhabitants at large, no part of the cost of any street works executed by the Council shall be apportioned against any land which was rated otherwise than as agricultural land on * and is so rated at the date of the apportionment of such cost, and the part of such cost which by reason of this sub-clause cannot be apportioned against such land shall be borne and paid by the Council;

(*b*) *The grounds of objection set out in section* 7 *of the Act* (*b*) *shall be deemed to include an objection on the ground that a part of such cost has been apportioned against land contrary to the provisions of this sub-clause.*

[*Any dispute arising out of the provisions of this sub-clause shall be determined by arbitration* (*c*) *in the manner provided by the Act.*]

(*a*) The basis upon which streets will be determined to be private or otherwise is indicated by the following extract from paragraph 5 of the explanatory memorandum accompanying the model clauses: "The streets declared by the authority under clause 6 will fall into two classes, namely—(1) those which are required in the interest of the general public and, subject to any agreements with owners, the whole cost of which the authority should bear; and (2) those which can fairly be regarded as being, in part at least, in anticipation of development which owners would eventually undertake, and to the cost of which it is accordingly reasonable that the frontagers, being directly benefited, should contribute. It is considered that normally it will be practicable to decide beforehand to which class each of the new streets and widenings should be

* The date of the council's resolution to prepare the scheme or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

assigned, and it is intended that the class to which each belongs shall be indicated by its number on the map."

This is, of course, the basis of distinction which has been adopted in previous schemes.

(*b*) See note (*e*) to model clause 5.

(*c*) See note (*f*) to model clause 5.

Construction of Sewers (*a*).

8. Where a sewer is constructed by the Council under any land coloured pink on the map before the land becomes, or is declared under this Part of the Scheme to be, a private street, the Council may, after the land has become or been declared to be a private street, include the cost of the sewer in the expenses of any street works executed by them upon the street in the same manner and subject to the same conditions as if they had constructed the sewer under the street under the provisions of [*section* 150 *of*] the Act as modified by this Scheme (*b*).

(*a*) This clause, dealing with a matter only incidental to street works, cannot be regarded as an example of a provision dealing with item 5 of the Fourth Schedule to the Housing, Town Planning, etc. Act, 1909 (see p. 166). The model clauses contain no other provisions relating to sewerage. Such provisions are, however, to be found in six of the existing schemes—the Ruislip-Northwood Scheme (clauses 57, 65, and 66); the Rochdale (Marland) Scheme (clauses 22 and 23); the North Bromsgrove (Rubery) Scheme (clause 36); the Otley Scheme (clauses 31 and 32); the Hunslet (Templenewsam) Scheme (clause 46); and the Luton Scheme (clause 21—combined drains).

(*b*) The second part of paragraph 13 of the explanatory memorandum is as follows: "Power is given (clause 8) to include in an apportionment of street work costs the cost of a sewer constructed on land coloured on the map before the land becomes a street, subject, of course, to the necessary easement being obtained under the authority's statutory powers, apart from the scheme. The sewer could always be constructed without an easement when the street has been declared, but where a sewer is needed in the absence of a street, *e.g.* for purposes of connection with other land in course of development, it may be more convenient to obtain an easement than to declare the land or any part of it a street at once. In that case it would not appear inequitable that an owner should bear his fair share of the cost of the sewer, when the street is declared or becomes a private street and he develops to it."

Restrictions upon Street Sites.

9. No building shall be erected or other work done upon any land coloured pink on the map which, for the purpose of enabling street works to be executed, would require to be removed, pulled down or altered, except with the consent of the Council and upon such terms and conditions with regard to such removal, pulling down or alteration, or otherwise as the Council may require (*a*).

(*a*) It may be important to consider, in connection with the terms and conditions which may be required, the provision contained in model clause 41 (4) and the note thereon.

Upon this clause the explanatory memorandum (paragraph 4) contains the following observation: "It is essential that nothing should be allowed to be done on these sites which, when the time comes for the streets to be constructed, would render the construction appreciably more costly, but it is also important to avoid sterilising the land more than is really necessary, particularly in the case of streets which are not likely to be constructed for a prolonged period. Accordingly, with the object of enabling a local authority to permit reasonable development without incurring the risk of a consequential increase in cost, a clause (clause 9) is provided, under which the erection of buildings on the sites shown on the map or the carrying out of other works is prohibited, except with the consent of the authority and on such terms (*e.g.* that no compensation should be claimed) as to the removal of the buildings or works as they may require."

Construction of Streets Dedicated by Owners.

10. (1) No new street shall be commenced until all notices required by the bye-laws have been duly given and the plans and sections so required have been approved by the Council.

(2) In approving any plans and sections the Council shall specify the street works to be executed, the width, materials, site and levels of the street, the turning and crossing places to be provided, and generally the manner in which the street is to be constructed (*a*).

(3) Except where otherwise agreed between the Council and the persons concerned, no works, other than temporary works and works of maintenance, shall be executed upon or in connection with the street otherwise than in accordance with the Council's specification, before the street is declared to be a highway repairable by the inhabitants at large.

(4) The Council may, if they think fit, contribute towards the cost of the construction of a street constructed under this clause.

(5) Nothing in this clause shall empower the Council to require a street to be constructed in accordance with a specification involving any cost in excess of the cost of constructing on the site thereof a bye-law street, unless the Council agree themselves to bear the excess cost (*b*).

(6) Where any new street the plan of which has been submitted to and approved by the Council under this clause is in the opinion of the Council likely to be required for through traffic, the Council may at any time declare that the land forming or intended to form the site of the street, if not already coloured pink on the map, shall be deemed to be so coloured, and shall forthwith notify the persons interested in the land of the declaration, and the Council shall thereafter have the same powers and duties in regard to the land as if it had been coloured pink on the map.

(7) Any person who desires to construct a new street and feels aggrieved—

(*a*) by any specification of the Council under this clause, or

(*b*) by any neglect or refusal of the Council to give any approval under this clause,

and any person notified under sub-clause (6) of this clause who feels aggrieved by any declaration of the Council under that sub-clause may appeal to the Minister (*c*).

(*a*) In the earliest of the existing schemes the construction of streets dedicated by owners was defined by specific typical cross-sections shown on a sheet called Sheet B. *Cf.* note (*g*) to model clause 6. In the model clauses, as in the later existing schemes, the specification is left to the discretion of the authority.

(*b*) As to the maintenance of such a street, see model clause 6 (4) (*a*).

(*c*) As to the procedure upon an appeal to the Minister, see model clause 56. Other instances of a right of appeal are given by model clauses 18 (4), 38 (3), 42 (2), and 43 (2). These include as tribunals not only the Minister of Health, but also a Court of Summary Jurisdiction, and an arbitrator to be agreed upon by the parties or, in default, to be appointed by the Minister. The existing schemes furnish, as a further example, an arbitrator to be appointed under the provisions of the Arbitration Act, 1889. The choice of an appeal tribunal to deal with town planning problems from the point of view of local conditions is a difficult one, and must depend upon the special circumstances and the character of the subject-matter of the appeal. The usual appeals will also lie under the Private Street Works Act, 1892, or the Public Health Act, 1875, as the case may be.

Submission of Schemes of Development of Estates.

11. (1) Whenever a plan for a new street is submitted to the Council for approval, they shall by written notice request the owner of any land within that part of the area, the development of which will, in their opinion, be affected by the construction of the street, to furnish them with plans and particulars showing generally a scheme for the development or laying out of the land (*a*).

(2) Before approving the plan for the new street the Council shall take into consideration any plans and particulars which are furnished to them by any such owner within a reasonable time to be specified in the notice, being not less than one month from the date of the notice.

(*a*) In several of the existing schemes (*e.g.* clause 10 of the Birmingham (North Yardley and Stechford) Town Planning Scheme) this power is permissive instead of obligatory, and is expressed to be in addition to any powers now or hereafter conferred upon the authority by s. 17 of the Public Health Acts Amendment Act, 1907, or any Act amending the same. That section enables an authority, to whom it has been applied, to exercise powers similar to those conferred by model clause 10 (2), but subject to compensation, and not so as to entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

Relaxation of Bye-laws (*a*).

12. (1) Notwithstanding any provisions of the bye-laws to the contrary, the Council may permit the construction of a new street—

(*a*) of any one of the types described in the First Schedule to this Scheme ; or

(*b*) of such other type as the Minister may from time to time authorise the Council to permit :

Provided that permission to construct a street of any one of the types described in the said Schedule shall be given only if the street is not likely to be required for through traffic, and it shall be a condition of such permission that—

(i) No buildings other than dwelling-houses or such residential or public buildings (as respectively defined in Clause 17) as the Council may approve shall be erected in the street ;

(ii) Any portion of the surface of the street not constructed as carriage-way or footway shall be planted with grass, trees, or shrubs or treated in some other suitable manner to the reasonable satisfaction of the Council ;

(iii) Any turning space which is required by the conditions set out in the Schedule shall be of such dimensions that a circle with a diameter of 30 feet could be inscribed within the carriage-way of the street.

(2) In the case of any street proposed to be constructed upon any land coloured pink on the map, the Council may, if they think it desirable that a part of such street should be constructed in advance of the remainder of the street, themselves construct such part, or may permit such part to be constructed, of a less width than is required by the bye-laws.

(*a*) The suspension of bye-laws inconsistent with the scheme is effected by model clause 55.

Grass Margins, etc.

13. (1) The Council may lay out as a garden any part of a street repairable by the inhabitants at large or may plant any part of such street with grass, trees or shrubs and erect guards therefor and may maintain, alter or renew the part of the street so laid out or planted.

(2) The Council may from time to time rearrange the carriage-way, footway and other parts of the street.

(3) Where the Council execute street works upon any street declared under clause 6 of this Part of the Scheme, the Council shall plant with grass, trees or shrubs, or treat in other suitable

manner any part of the street not constructed as carriage-way or footway, shall provide convenient access from the carriage-ways and footways to any premises abutting on the street, and shall execute any works necessary for fencing off the street from the adjoining lands or for replacing any fences removed (*a*).

(*a*) The explanatory memorandum (paragraph 9) observes as follows: "It is important, however, that the interests of abutting owners in the streets on the map should be duly recognised and that any street only partially constructed by the authority should not be left in a condition likely to prejudice building development. Clause 13 (3) therefore requires the authority, in the case of streets constructed on their own initiative, to lay out with grass margins or in other suitable manner any portion of the street not constructed as a carriage-way or footway, and to provide convenient access to abutting premises."

Wilful Damage.

14. No person shall wilfully damage any tree, shrub, plant, or grass in any street or any fence or guard erected thereon, and no person shall wilfully ride or drive any horse, cattle or vehicle over or across any grass margin (*a*).

(*a*) The penalty is imposed by model clause 51.

Adjustment of Boundaries of Streets.

15. For the purpose of adjusting the boundary of any street, the Council may make an exchange of land forming part of the street for other land, with or without paying or receiving any money for equality of exchange (*a*).

(*a*) This model clause may be usefully compared with a clause dealing with adjustment of boundaries for general town planning purposes, such as clause 24 of the Birmingham (North Yardley and Stechford) Town Planning Scheme. Sub-clause (*c*) of the latter clause, it will be found, contains desirable provisions as to the transfer of the burden or benefit of covenants, restrictions, and conditions.

Diversion or Stopping up of Highways.

16. (1) Each of the public highways coloured on the map and specified in the first column of the Second Schedule to this Scheme is hereby declared to be diverted or stopped up, and all public rights therein are declared to cease, as from the date on which the proposed new street to be constructed on the lands the number of which is set opposite to that highway in the second column of the said Schedule, is constructed to the satisfaction of the Council.

(2) The Council may within six months after the date on which a highway or any portion thereof is diverted or stopped up remove

therefrom, without payment, any road material of which the highway is constructed or which is lying thereon.

(3) The diversion or stopping up of a highway under this clause shall not affect (*a*) the rights of the Council or of any statutory undertakers or other persons in any sewers, gas or water mains, electric cables or wires, or other works lying on or under the highway, and the Council and such statutory undertakers and other persons shall have the same powers of inspection, maintenance and repair of such works and of entry upon the land for that purpose as if the highway had not been diverted or stopped up :

Provided that the Council may, if they think fit, divert or transfer any such works and execute any works necessary and incidental to such diversion or transfer, and may enter into agreements for the purpose, but no such diversion or transfer shall take place until notice has been given to any statutory undertakers affected.

(*a*) In previous schemes (*e.g.* clause 21 (*d*) of the Otley Town Planning Scheme) provision is made enabling the owner of the land at his expense to require the authority to transfer or to abandon sewers, mains, cables, or other works.

PART III.—BUILDINGS AND BUILDING LINES.

Interpretation.

17. In this Part of the Scheme, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them :—

" Dwelling-house " means a house designed for use as a dwelling for a single family, together with such out-buildings as are ordinarily (*a*) required to be used therewith ;

" Residential building " means any building, other than a dwelling-house, designed for use for human habitation, together with such out-buildings as are ordinarily required to be used therewith, and includes a hotel and a residential club ;

" Shop " means a building designed for the purpose of carrying on retail trade (*b*) ;

" Industrial building " means a building designed for use as a factory or a workshop within the meaning of the Factory and Workshops Acts, 1901 and 1907 (*c*), and includes a warehouse, and a " building for noxious industry " means an industrial building designed for the purpose of carrying on any industry mentioned in the Third Schedule to this Scheme (*d*) ;

" Business premises " means a building designed for use as an office or for other business purposes, not being a shop or industrial building.

"Place of assembly" means a building designed for use as a town hall, theatre, concert room, lecture hall, place of public worship, or other place of public assembly whether used for purposes of gain or not, and includes a non-residential club ;

"School" means a building designed for use as a college or school ;

"Institution" means a building designed for use as a hospital, workhouse, asylum, or other public or charitable institution, other than a place of assembly or a school ;

"Public building" means a place of assembly, institution or school (*e*) ;

"Special building" means a building designed for any use other than one of the uses for which the buildings hereinbefore defined are designed ;

"Zone" means a portion of the area shown on the map by distinctive colouring, hatching or edging (*f*) for the purpose of indicating the density or character of buildings prescribed therefor, and the terms "density zone" and "character zone" mean zones indicating restrictions as to density and character of buildings respectively.

A "land unit" means a portion of land to be determined by the Council in accordance with the provisions of this Part of the Scheme for the purpose of limiting the number of building units (as calculated in accordance with clause 18 (3)), which may be erected thereon.

The erection of a building includes :—

(i) The re-erection, wholly or partially, of any building of which an outer wall is pulled down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down as to leave only the framework of the lowest storey ;

(ii) The conversion of a building of any of the types hereinbefore defined into a building of any other of such types (*g*).

The site of a building includes all the land within its curtilage (*h*).

As to this interpretation clause generally, see note (*b*) to model clause 1.

(*a*) The construction of this word must clearly vary with the circumstances to which the clause may be applied.

(*b*) The application of the word "shop" is extended by model clause 18 (1). The definition is very similar to that contained in s. 19 of the Shops Act, 1912. In the Memorandum on the law relating to shops issued from the Home Office in March, 1912, it is observed : "Generally speaking, retail trade is the sale of goods in small quantities to the public and is distinguished from wholesale trade, which means the sale of goods in bulk or in large quantities to traders who sell in smaller quantities to the public."

(c) Definitions of "textile factory," "non-textile factory," "tenement factory" and "workshop" are contained in s. 149 of the Factory and Workshop Act, 1901, and the Sixth Schedule thereto. "Laundries" are added to Part II. of the Sixth Schedule of the Act of 1901 by virtue of s. 1 of the Factory and Workshop Act, 1907.

(*d*) An extract from paragraph 25 of the explanatory memorandum reads: "The schedule of 'buildings for noxious industry' is intended to cover industrial buildings such as works under the Alkali, etc. Works Regulation Act, 1906, which require to be specially placed, whether in an industrial area or not."

"Alkali work" is defined in s. 27 of the Alkali, etc. Works Regulation Act, 1906, as meaning every work for (*a*) the manufacture of sulphate of soda or sulphate of potash; or (*b*) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed; in which muriatic acid gas is evolved. The list of works referred to in ss. 6 and 7 of the Act as defined in the First Schedule thereto, include works for the manufacture of sulphuric acid, chemical manure, gas liquor, nitric acid, sulphate and muriate of ammonia, chlorine, muriatic acid, sulphide, Venetian red, arsenic, picric acid, paraffin, tar, zinc, and other commodities therein specified.

The Third Schedule to the scheme might also be framed to include the offensive trades set out in s. 112 of the Public Health Act, 1875, namely, blood, bone, or soap boiling, and similar trades.

(*e*) This definition, together with that of "dwelling-house" and of "residential building," is referred to in the proviso to model clause 12.

(*f*) See the system of notation for use in the preparation of town planning maps, pp. 203 and 204.

(*g*) See s. 159 of the Public Health Act, 1875, and s. 23 of the Public Health Acts Amendment Act, 1907. This definition is amplified for certain purposes by model clauses 32 (3) and 33 (5).

(*h*) The word "curtilage" as here used no doubt means the area attached to and containing the main building and its outbuildings (see clause 31, note (*a*)). The expression "site of a building" is to be found in model clauses 20 (2) and 22 (2) (*a*).

Combined Buildings and Building Units.

18. (1) Where a proposed building is designed for use both as a shop (*a*) and as a dwelling for a single family, it shall be treated, for the purposes of this Part of the Scheme, as if it were a shop.

(2) Subject as aforesaid, where a proposed building is designed for more than one use, the Council may decide which is the primary use for which the building is designed, and for the purposes of this Part of the Scheme the building shall be deemed to be designed exclusively for that use.

(3) For the purposes of this Part of the Scheme a dwelling-house (*b*) shall be reckoned as one building unit, and a building (*c*) other than a dwelling-house as such number of building units as the Council may decide.

(4) The owner of any building or of the site of any proposed building who feels aggrieved by a decision of the Council under this clause in respect of the building or proposed building may appeal to the Minister (*d*).

(*a*) See definition in model clause 17.

(*b*) The building unit is a unit of measurement for buildings, not for land, so that the expression "site of a dwelling-house" is not used.

(*c*) See note (*b*) above. Paragraph 18 of the explanatory memorandum, in dealing with the assessment of the number of building units to be regarded as equivalent to a building, has the following observation: "In determining this number the number of building units that could, under the density provisions, be erected upon the site of the building in question if the site formed a separate land unit (any additional space required under the clause dealing with the proportion of site which may be covered by buildings being taken into account) would normally be a useful guide."

The expression "building unit" is not found in any of the existing schemes.

(*d*) As to appeal, see note (*c*) to model clause 10.

PRIMARY ZONING.

A. Density of Buildings.

Erection of Dwelling-Houses and Residential Buildings.

19. No dwelling-house or residential building shall be erected upon land not included in a land unit.

Declaration of Land Units (*a*).

20. (1) Subject to the following provisions the Council shall, upon application being made to them by any owner of land or jointly by two or more owners of adjoining land, declare that the land in respect of which the application is made or such part thereof as they think fit shall form one or more land units.

For this purpose the submission by an owner of a building plan shall be deemed to be an application for the declaration of a land unit in respect of the land included in the plan.

(2) The Council may include in a land unit land belonging to the applicant other than that to which the application relates, but shall not, except with the consent of the applicant (*b*), so include the site of a building commenced before *.
The Council may also include in the unit any land given by or acquired from the applicant for the purpose of a public open space after *.

(3) The Council may require the applicant to submit a plan showing the whole of his land which is not already included in a land unit or such part thereof as they think fit.

(4) Every land unit shall be contained wholly within one density zone.

(5) No land unit shall exceed seven acres in extent (*c*).

(6) The half of the width of any road dedicated to the public upon which any land proposed to be included in a land unit abuts shall be included in the land unit (*d*).

* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

(*a*) The regulation of density by the "land-unit" system is to be found in varying forms throughout the existing schemes. The extent of the land unit is usually determined by the authority if the owner owns other land in the area not included in the building plan he submits: if he owns no other land, the area shown in the building plan is to be regarded as the land unit. See clause 23 (*c*) (ii) of the North Bromsgrove (Rubery) Town Planning Scheme. In the Ruislip-Northwood Town Planning Scheme (clause 49 (*b*)) the basis upon which land units are determined is formed by squares marked in red lines on the map.

(*b*) The explanatory memorandum states in paragraph 18: "It is not intended that density restrictions should apply to buildings erected before the scheme, and therefore the sites of existing buildings are not to be included in a land unit except with the consent of the owner."

(*c*) This limitation is also contained in clause 49 of the Ruislip-Northwood Town Planning Scheme. In clause 19 (*e*) of the Chesterfield (Chester Street Area) Town Planning Scheme, although the term "land unit" is not used, similar provisions impose a limitation as low as two acres. In the Birmingham schemes the extent of the land unit is unlimited.

(*d*) Paragraph 18 of the explanatory memorandum states: "It is, however, contemplated that the sites of roads and private open spaces should be included in the unit. It has been thought necessary to refer specifically in the clause to roads dedicated to the public in order to obviate any doubt as to their inclusion on the score of ownership. The inclusion or exclusion of public open spaces given to the local authority or acquired by them after the date of their resolution to prepare the scheme is left to the determination of the local authority, but it is contemplated that open spaces given to the local authority or acquired by them on specially favourable terms on that understanding would normally be included so far as practicable."

Calculation of Number of Building Units which may be Erected.

21. (1) In the case of a land unit in respect of which a plot plan is not submitted to and approved by the Council under the next succeeding clause, the number of building units on the land unit shall not at any time exceed the number which will give the average (*a*) per acre specified in the table below. For this purpose all buildings included in the land unit by consent of the owner under clause 20 (2), shall be taken into account.

Table.*

Zone.		Average number of building units per acre over a land unit not to exceed
Zone A, coloured	on the map	12
Zone B, coloured	on the map	8
Zone C, coloured	on the map	6 (*b*)

(2) Where it appears to the Council upon representation being made by any owner of land that it would be unreasonable to require

* The figures given in this table are intended to be illustrative only.

compliance with the provisions of this clause owing to difficulty in developing the land in accordance with those provisions on account of :—

(i) the lay out of any street on or adjoining the land constructed before *,

(ii) the small amount of land in the possession of the owner on *,

the Council may authorise a reasonable increase in the number of building units permitted to be erected on the land affected (*c*).

(*a*) The "average per acre" is intended to be the average over the land unit. See the heading to the second column of the table.

(*b*) Paragraph 21 of the explanatory memorandum states : "An example of a low density restriction has been included in the table, but great caution should be exercised in imposing low densities. They must be in the public as well as the owners' interest, and care must be taken to avoid any possible risk of checking the development of the land concerned. Low densities cannot, as a rule, be safely imposed unless there is clear evidence that the land concerned is being or will in the near future be developed for a class of property for which larger plots are generally required."

(*c*) Generally, in the existing schemes the number of buildings permitted on each land unit is to be prescribed at the time that the land unit is determined. In the model clause, the development is regulated only by the provision as to the maximum averages permitted. It should be observed that further variation of the average number of building units that may be erected per acre in a density zone is permitted under model clause 29 (1) (*c*). In paragraph 18 of the explanatory memorandum appears the following : "It has not been considered necessary to impose a restriction as to the maximum number of building units to be permitted on any one acre. The restriction would involve somewhat complex provisions as to the method of measuring the acre, and its purpose would seem to be sufficiently met by the limitation imposed as to the proportion of the site of a building that may be built on (clause 31)."

As to what is meant by the "site of a building," see clause 17 and note (*h*) thereto.

Plot Plans.

22. (1) Any owner of land within a land unit may, for the purpose of having the number of building units permitted to be erected on that land determined prior to sale or for any other reason, submit for the approval of the Council a plot plan showing the plots within the unit (*a*) upon which it is proposed to build and the number of building units proposed to be erected on each plot.

(2) The Council shall not approve a plot plan submitted to them under this clause unless the following conditions are complied with—

(*a*) The site of every building existing or commenced upon the land unit at the date of submission of the plot plan must be included in one or more of the plots ;

* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

(*b*) The average number of building units shown on the plot plan as proposed to be erected per acre over the land unit must not exceed the average per acre specified in the appropriate part of the table in the last preceding clause.

(*a*) The plot plan is not essential to the measurement of density, and its only object is for the convenience of owners. The model clause would appear to be unworkable unless the intention is understood that a plot plan should be co-extensive with a land unit. If upon the development of the land a variation of the land unit is found desirable, provision is made in model clause 24 to enable the authority to vary the same accordingly.

Paragraph 19 of the explanatory memorandum contains the following: "It is thought that the plot plan machinery will also be of use in facilitating the re-development of any built-up areas of a density higher than that permitted under the scheme that may have been legitimately included in a scheme. Apart from the plot plan clause, it would be necessary in such cases, before any re-development could take place, that sufficient ground should be cleared to allow a building to be erected if the ground cleared formed a land unit by itself. If a plot plan were approved, however, it would be possible to show the proposed re-development plot plan over the existing buildings and to begin re-building as soon as any plot was cleared. Thus, in a zone restricted to an average of 12 to the acre, under the land unit machinery alone no re-building could take place until one-twelfth of an acre was cleared, whereas if a plot plan had been approved it could be begun as soon as an area of land sufficient to satisfy the requirements as to space about buildings of clause 31 was clear. In this connection it may be well to emphasise that, in considering a plot plan, it will be necessary to have regard to the restrictions imposed under clause 31, so as to avoid any risk of a plan which conforms with the density restrictions none the less providing for plots too small to accommodate buildings of the size intended."

Erection of Buildings upon Land for which a Plot Plan has been Approved.

23. Where a plot plan for a land unit has been submitted to and approved by the Council under the last preceding clause—

(1) No building shall be erected on any land within the land unit not included in a plot.

(2) There shall not be erected upon any plot a greater number of building units than would give (together with the equivalent in building units (*a*) of any buildings existing or commenced upon the plot at the date of submission of the plot plan) the number marked on the plot on the plot plan.

(*a*) See model clause 18 (3) and note (*c*) to that clause.

Variation (*a*) of Land Units and Plot Plans.

24. (1) The Council may from time to time vary any land unit, but before doing so they shall notify the owner of the land comprised within the unit:

(2) The owner of any land comprised within a plot plan may at any time, with the consent of the Council, vary the plot plan in so far as it affects his land :

Provided that no variation of a land unit or plot plan shall be made which would be inconsistent with the provisions of this Part of the Scheme in regard to the density of buildings.

(*a*) See model clause 22 and note (*a*) to that clause.

Land Units vested in more than one Owner.

25. In the event of the land comprised in a land unit in respect of which a plot plan has not been approved by the Council being or becoming vested in more than one owner and of the owners failing to agree as to the number of building units to be erected on their respective portions of the land, the Council shall, upon the application of the owner of any portion of the land, determine as between the applicant and the remaining owners what proportion of the maximum permissible number of building units may be erected on the portion belonging to the applicant and on the remainder of the land unit respectively.

Registration.

26. The Council shall keep, so as to be available for inspection by any person interested :—

(1) a register identifying each land unit by reference to a map (*a*) and showing the date on which the unit was fixed or varied and the particulars and the date of any apportionment made by the Council under the preceding clause as between owners of land included in the unit ; and

(2) a copy of each plot plan approved by the Council.

(*a*) A similar requirement is contained in all the existing schemes containing provisions for the determination of the land unit, *e.g.* the closing words of clause 22 (*c*) (iv) of the Otley Town Planning Scheme.

Appeals.

27. The owner of any land within a land unit who feels aggrieved by—

(1) a decision of the Council declaring or varying a land unit ; or

(2) any neglect or refusal of the Council to approve, or consent to the variation of, a plot plan for the land unit ; or

(3) any neglect or refusal of the Council to authorise an increase in the number of building units permitted to be erected on the owner's land,

may appeal to the Minister (*a*).

(*a*) As to appeal, see note (*c*) to model clause 10.

B. Character of Buildings (*a*).

Character Zones.

28. (1) (*a*) The predominant use for which each of the several zones referred to in the first column of the following table is intended to be reserved is the use indicated in that column (*b*), and the classes of buildings which may be erected either with or without the consent of the Council, as the case may be, or may not be erected in each zone, shall be as set out in the second, third and fourth columns of the table, but nothing in this clause shall prevent the erection of buildings required for agricultural or horticultural purposes upon land which is for the time being used for those purposes.

Table of Character Zones.*

Zone.	Buildings which may be erected without Council's consent.	Buildings which may only be erected with Council's consent.	Buildings not to be erected.
I. Residential. Hatched on the map.	Dwelling-houses, residential buildings.	Buildings other than dwelling-houses, residential buildings and buildings for noxious industry.	Buildings for noxious industry.
II. Special Business. Hatched on the map.	Shops and business premises.	Buildings other than shops, business premises and industrial buildings.	Industrial buildings.
III. Special Industrial. Hatched on the map.	Industrial buildings other than buildings for noxious industry.	Buildings for noxious industry and buildings other than industrial buildings.	—
IV. General Industrial and Business. Hatched on the map.	Buildings other than buildings for noxious industry.	Buildings for noxious industry.	—
V. Undetermined. Hatched on the map.	Buildings other than industrial buildings, shops, business premises and special buildings.	Industrial buildings, shops, business premises and special buildings.	—

* The types of zone illustrated in the table are intended only as examples.

(*b*) In giving their consent to the erection of a building the Council may impose such conditions as they think fit.

(*c*) In the case of any building proposed to be erected in zone I. which may be erected only with the consent of the Council, the Council, in giving or withholding their consent or imposing any conditions, shall have regard to the likelihood of the use for which the building is designed injuring the amenity of the zone including, in the case of an industrial building, the likelihood of any injury due to the emission of smoke or fumes, or to dust, noise or smell, or other cause.

(2) In any zone in which the erection of buildings designed for a particular purpose is not permitted, the user of a building for that purpose shall be a contravention of this Scheme, and in any zone in which the erection of buildings designed for a particular purpose is permissible only with the consent of the Council, the user of a building for that purpose without the consent of the Council shall be a contravention of this Scheme :

Provided that nothing in this sub-clause shall prevent a building whose erection was commenced before * being used for any purpose for which it was designed to be used or was used on that date.

(3) (*a*) The Council shall, as soon as may be, give notice by advertisement (*c*) in some local newspaper circulating in the area of any application made for their consent under this clause—

(i) to the erection in zone I. of an industrial building, a shop, business premises, or a special building, or to the user for the purpose of any such building of any building in that zone ; or

(ii) to the erection in zone III. of any building other than an industrial building, or to the user of any building in that zone for any purpose other than the purpose of an industrial building.

The notice shall be at the cost of the applicant (*d*) and shall state that any objections addressed to the Council in writing within 14 days after the date of the advertisement will be considered.

(*b*) The Council shall take into consideration any objections received within the said period of 14 days, and shall thereupon decide to give or withhold their consent or to give their consent upon such conditions as they think fit, and shall forthwith serve a notice of their decision upon the applicant and upon any person objecting to the application under paragraph (*a*) of this sub-clause.

(*c*) A decision of the Council under this clause shall not take effect until the expiration of 21 days from the date on which the applicant and the objectors, if any, are notified of the decision,

* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

or, if an appeal has been made to the Minister under the provisions of this clause, until such appeal is disposed of.

(4) (*a*) Any person who has applied for any consent of the Council under this clause and feels aggrieved by any neglect or refusal of the Council to give consent or by any conditions imposed by the Council may appeal to the Minister (*e*).

(*b*) Any person who feels aggrieved by any decision of the Council to give consent to the erection of, or user of, a building as an industrial building, a shop, business premises or a special building in zone I. or to the erection of any building other than an industrial building in zone III. or to the user of any building in that zone for any purpose other than the purpose of an industrial building, may appeal to the Minister (*e*), and shall forthwith notify the Council of the appeal.

(*a*) Nothing so elaborate in zoning provisions as the model clause is contained in any existing scheme. The nearest approach, perhaps, is clause 52 of the Ruislip-Northwood Town Planning Scheme. Usually, however, the clause simply effects the exclusion of a certain class of building from a defined area, as, for example, in the case of clause 28 of the Otley Town Planning Scheme. Such a provision, in the Birmingham (North Yardley and Stechford) Scheme, is included in the buildings clause (clause 18 (*e*)), which accordingly combines the requirements of the scheme both as to density and character of buildings: sub-clause (*c*) (iv) of the same clause requires advertisement in a newspaper of any intention to sanction the erection of a "special building," *i.e.* a building other than a dwelling-house. See note (*c*) below.

The model clause is the first to distinguish between predominant and subsidiary uses in zones.

(*b*) The explanatory memorandum (paragraph 26) states: "In drafting the illustrations given in the table, regard has been had to the consideration that it will generally be unwise, except in the case of small zones devoted to specialised purposes, to exclude entirely any class of buildings (except such a class as 'noxious industries'). . . . Zone IV., an example of a general industrial and business zone, is left practically unrestricted, so as to admit any buildings whose owners are prepared to dispense with protection against possible injury from incongruous forms of development.

"It is contemplated that small specialised zones will be adopted only in the case of peculiarly suitable areas in which development of the kind provided for can be confidently anticipated."

(*c*) *Cf.* clause 18 (*c*) (iv) of the Birmingham (North Yardley and Stechford) Town Planning Scheme.

(*d*) The means of recovering these costs is given in model clause 53 (1).

(*e*) As to appeal, see note (*c*) to model clause 10.

SUPPLEMENTARY ZONING (*a*).

Density and Character.

29. (1) If at any time the Council are of opinion that—

(*a*) the buildings to be erected in any part of a character zone ought to be limited to one or more of the classes of buildings which are permitted under clause 28 to be erected in that zone; or

(*b*) any class or classes of buildings which, under the provisions of clause 28 may only be erected in any zone with the consent of the Council can, consistently with the predominant use of the zone, be permitted to be erected in any part of the zone without such consent; or

(*c*) the average number of building units permitted under clause 21 to be erected per acre ought to be varied over the whole or any part of density zone ;

the Council may make an order (*b*) limiting the class or classes of buildings whose erection is permitted or giving a general consent to the erection of any class or classes of buildings in such part of the zone as aforesaid or varying the average number of building units permitted to be erected per acre in density zone ,

as the case may be, and may submit the order to the Minister for approval:

Provided that no order shall be made which would allow the average number of building units permitted to be erected per acre in zone to be increased to more than .

(2) The order may include any necessary modifications in the application of this Scheme to the zone or part of a zone to which the order relates.

(3) The order shall refer to a plan on the same scale as the map, defining the zone or part of a zone affected.

(4) Before applying for approval of an order under this clause, the Council shall give notice thereof by advertisement in a local newspaper circulating in the area, and shall include in the notice a statement that a print of the order and plan will be open for inspection at a specified place or places and that any interested person desiring to make any objections or representations with respect thereto may address them in writing to the Council within a specified period, not being less than 14 days from the date of the advertisement. Notices in the same terms shall be served on the owners of the lands to which the order relates and on any other owners in the area who may in the opinion of the Council be affected.

Before approving an order under this clause, the Minister may require similar notices to be served on any additional owners who may in his opinion be affected by the order.

(5) If the Minister having regard to the nature and situation of the land affected by the order considers that the provisions of the order are reasonable, he may approve the order with or without modification, and the order so approved shall thereupon have effect as if it were incorporated in and formed part of this Scheme.

(6) An order under this clause shall be in duplicate, one part

to be deposited with this Scheme at the office of the Clerk to the Council and the other at the Ministry of Health.

A copy of the order shall be served by the Council on any owner on whom a notice has previously been served under this clause, and notice of the approval of the order shall also be given by advertisement in a local newspaper circulating in the area, stating that a copy of the order as approved by the Minister may be inspected at a specified place or places.

(*a*) The existing schemes do not furnish an example of supplementary zoning. Paragraph 27 of the explanatory memorandum states: "The object of this provision is, as regards character zoning, to enable more detailed zoning to be undertaken as the course of development reveals itself."

(*b*) The meanings contained in the Interpretation Act, 1889, are apparently applied to the expressions used in such an order by s. 31 of the Act of 1889.

Height of Buildings (*a*).

Limitation of Height of Buildings.

30. (1) No building (not being an industrial building (*b*) erected in character zones II. and III.) * shall be so erected or altered that:—

(*a*) the highest point of the building, measured from the mean level of the ground immediately surrounding the building, exceeds 70 feet † in height;

(*b*) any part of the building projects above any line drawn from the centre of the street in front of the building at an angle of 56° (or if the street is of any one of the types described in the First Schedule to this Scheme, 45°) ‡ with the horizontal:

Provided that—

(i) For the purpose of the foregoing provisions account shall be taken of parapets but not of chimneys, ornamental towers, turrets or any other such architectural features;

(ii) In the case of a building erected at the corner of two or more intersecting streets the height of the building shall be determined by reference to the wider or widest street;

(iii) In the case of a place of assembly the Council may permit either or both of the limits imposed by this clause to be exceeded to such extent as they may think fit.

* Industrial zones.

† This figure should not be regarded as invariable.

‡ Streets involving relaxation of the bye-laws and intended for residential use only.

(2) No dwelling-house erected in the zone edged on the map shall contain more than two storeys, exclusive of any storey constructed wholly or partly in the roof and exclusive of any storey the floor of which is more than 6 feet below the mean level of the centre of the street in front of the building:

Provided that, if in the case of a group of contiguous dwelling-houses not exceeding six in number it is desired to maintain the height of all the dwelling-houses forming the group at the same level, not more than four of the dwelling-houses may, where the slope of the street in front thereof renders it necessary, contain three storeys, exclusive of any storey constructed wholly or partly in the roof.

(*a*) Clauses 50 and 51 of the Ruislip-Northwood Town Planning Scheme furnish other examples of provisions limiting the height of buildings.

(*b*) In paragraph 29 of the explanatory memorandum it is observed: "It is not contemplated that it will normally be necessary to control the height of industrial buildings in industrial areas, and these are exempted from the operation of the clause. Where industrial buildings are allowed in residential areas with consent, the height can be controlled as a condition of consent as well as by the provisions of the clause."

Space about Buildings.

Space within curtilage (*a*) of Buildings which may be covered by Buildings.

31. In the case of a building whose erection is commenced after * the proportion of land within its curtilage which may be occupied by buildings shall not exceed the proportion indicated in the table below;

In the case of a building whose erection is commenced before * no alteration shall be made thereto such that the area of the ground covered by the building on that date would be increased by more than 20 per cent. if the proportion of land occupied by buildings within the curtilage of the building as altered would exceed the proportion indicated in the table:

Provided that—

(*a*) the Council may permit the proportion to be increased in the case of a building erected before ,* or where, owing to a building abutting on two or more streets, or by reason of any other exceptional circumstances, they think fit so to do; and

* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

(*b*) in the case of a dwelling-house which (i) is, in the opinion of the Council, adjacent to the junction of two or more streets or (ii) is situated within the zone edged on the map, the proportion of land within the curtilage thereof which may be occupied by buildings, may exceed the proportion indicated in the table, but shall not exceed ;

(*c*) the provisions of this clause shall not preclude the erection of a building proposed to be erected by virtue of an exemption granted under clause 21 (2).

TABLE.*

Character of buildings.	Dwelling-houses.	Residential buildings, institutions, schools and shops in which dwelling accommodation is provided.	Other buildings.
Neither exceeding 30 ft. in height nor being, over the main part of the building, of more than one storey above ground level.	$\frac{1}{3}$	$\frac{1}{2}$	$\frac{3}{4}$
Exceeding 30 ft. in height or being, over the main part of the building, of more than one storey above ground level.	$\frac{1}{4}$	$\frac{1}{3}$	$\frac{2}{3}$

For the purposes of this clause the height of a building shall be measured from the mean level of the ground surrounding the building to the top of the parapet, or half the height of the roof, whichever is the higher.

(*a*) The operation of this clause is intended to preclude the necessity of imposing a restriction as to the maximum number of building units to be permitted on any one acre. See note (*c*) to model clause 21. The word "curtilage" is used several times throughout the present clause, and the operation of the clause is highly dependent upon its meaning. The word is sometimes used as meaning a small court, yard or piece of ground attached to a building and forming one enclosure with it; and sometimes as meaning the area attached to and containing the main building and its outbuildings (see Murray's English Dictionary). In the model clause "curtilage" is no doubt used as having the latter meaning. It appears to be equivalent to "site" of a building as used in the model clauses (see clause 17, note (*h*)).

* This table is intended only as an example.

Breaks in Buildings.

32. (1) Not more than eight dwelling-houses or residential buildings shall be erected in one continuous block, and no detached dwelling-house or residential building or block of dwelling-houses or residential buildings shall be erected nearer to a building or block of any of those types than six feet or nearer to any other building than three feet.

No building shall be erected nearer to the owner's boundary, or to a building or block of any of the aforesaid types, than three feet.

(2) Notwithstanding the provisions of this clause, the Council may, if they think fit, permit—

(*a*) more than eight dwelling-houses or residential buildings to be erected in one continuous block where the buildings are arranged to the satisfaction of the Council;

(*b*) the erection between two buildings of a connecting wall, arch or other architectural feature approved by the Council;

(*c*) the erection adjoining a building of an outbuilding not exceeding ten feet in height (measured from the mean level of the ground surrounding the outbuilding to the top of the parapet or half the height of the roof, whichever is the higher).

(3) For the purposes of this clause the erection of a building includes, in addition to the operations referred to in clause 17, the making of any addition to any building erected after * (*a*).

(*a*) See note (*g*) to model clause 17.

Building Lines (*a*).

Effect of Building Line. Building Lines shown on Map.

33. (1) Where a building line for any street or proposed street is shown on the map or, not being shown on the map, is fixed by the Council under the provisions of this Part of the Scheme, no building or structure, other than boundary walls or fences or temporary structures erected in connection with building operations, shall, save as hereinafter provided, be erected nearer to the street than the building line.

Fixing of Building Line for New Street not shown on Map (*b*).

(2) The Council may fix a building line for any new street not shown on the map when the plan for that street is submitted to them for approval.

* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

FIXING OF BUILDING LINE FOR EXISTING STREET WHERE LINE NOT SHOWN ON MAP (*b*).

(3) In the case of an existing street for which no building line is shown on the map, the Council may fix a building line either for the street or for such part thereof as they think fit when the plan of a building which is proposed to be erected fronting on the street is submitted to them for approval:

Provided that before fixing a building line in respect of land belonging to any owner other than the person submitting the building plan, the Council shall give that owner not less than 14 days' notice of their intention to fix a building line and shall consider any objections which may be addressed by him to the Council.

POWER TO PERMIT BUILDINGS IN ADVANCE OF BUILDING LINE (*c*).

(4) Notwithstanding the foregoing provisions of this clause, the Council may, if they think fit, permit—

(*a*) the projection in front of the building line of any bay window, porch or other projecting portion of a building;

(*b*) in the case of industrial buildings, the erection of the building at such distance, not being less than 10 feet from the boundary of any street, as the Council may specify;

(*c*) the erection of groups of shops and business premises at such distance, not being less than five feet from the boundary of any street, as the Council may specify;

(*d*) the erection in front of the building line of any building where, by reason of the levels of the site or of any adjoining land, or by reason of any other exceptional circumstances, or for purposes of architectural effect, such permission is in the opinion of the Council advisable;

(*e*) the erection in front of the building line of a lodge or other building to be used in connection with a dwelling-house, provided that the lodge or building shall not exceed two storeys in height and shall not be nearer than ten feet to the boundary of the street.

Before giving permission under paragraph (*b*), (*c*) or (*d*) of this sub-clause, the Council shall, at the expense of the applicant, give notice in writing of the proposal to the owners of the adjoining land and to all other persons who, in the opinion of the Council, may be affected by the giving or withholding of such permission, and shall consider all objections which may be addressed to them

in writing by any such person within a period, not being less than 14 days, to be specified in the notice.

(5) For the purposes of this clause the erection of a building includes, in addition to the operations referred to in clause 17, the making of any addition to an existing building (*d*).

(6) Any owner who feels aggrieved by a decision of the Council fixing a building line in respect of his land may appeal to the Minister (*e*).

(*a*) Clauses to enable the fixing of building lines are generally to be found in the existing schemes. Paragraph 31 of the explanatory memorandum has the following observation: "It will, however, be realised that, owing to the decision given in the case of *Re Ellis* and *Ruislip-Northwood U.D.C.* ([1920] 1 K. B. 343; 122 L. T. 98), compensation can, in certain circumstances, be claimed in respect of building line provisions, and the importance of avoiding injurious affection has been borne in mind in drafting the clauses. The time for making claims for compensation or betterment in respect of building lines fixed after the approval of the scheme is extended in the general compensation clause (clause 57)."

(*b*) A typical example of the building line provisions contained in the existing schemes is to be found in sub-clauses (*d*), (*e*), (*f*), and (*g*) of clause 8 of the Birmingham (North Yardley and Stechford) Town Planning Scheme. These provisions do not leave the fixing of a building line not shown on the map to the discretion of the authority as in the model clause, but require every such line to be "set back from the frontage line to a distance of 20 feet or such other distance as is indicated in Sheet B"—Sheet B being the annexed sheet of street cross-sections referred to in note (*a*) to model clause 10.

(*c*) Similar provisions are contained in sub-clauses (*e*) and (*f*) of clause 8 of the Birmingham (North Yardley and Stechford) Scheme.

(*d*) See note (*g*) to model clause 17.

(*e*) As to appeal, see note (*c*) to model clause 10.

Application of Public Health (Buildings in Streets) Act, 1888.

34. (1) In any street in which a building line is in operation under this Scheme a person shall not be precluded by section 3 of the Public Health (Buildings in Streets) Act, 1888 (*a*), from erecting or bringing forward any house or building to which the building line applies beyond the front main wall of the house or building on either side thereof.

(2) Nothing in this clause shall authorise the erection or bringing forward of any house or building beyond the building line shown on the map or fixed by the Council under the provisions of this Part of the Scheme.

(*a*) By this, the building line prevails over the Public Health (Buildings in Streets) Act, 1888. The second proviso to sub-clause (*d*) of clause 8 of the Birmingham (North Yardley and Stechford) Town Planning Scheme reads: "And provided further that in any street where there are buildings existing

at the date of the approval of this scheme, the building line shall (subject to sub-clauses (*e*) and (*f*) of this clause) be set back to such a distance as will accord with such existing buildings, or to the distance hereinbefore prescribed, whichever is the greater." The effect of s. 3 of the Act of 1888, stated shortly, prohibits, without the written consent of the urban authority, the erection or bringing forward of any house or building in any street, or any part of such house or building, or the building of any addition to any house or building, "beyond the front main wall of the house or building on either side thereof."

PART IV.—RESERVATION OF LANDS.

Reservation and Acquisition of Lands (*a*).

35. (1) The uses for which the lands specified in column 1 of the following table are reserved are indicated in column 2 of the table. The lands specified in the table may, until acquired by the Council or in the case of lands reserved for use as private open spaces until such date as the Council in each case fix, continue to be used as they are used at the date of approval of this Scheme or may be used for purposes of agriculture and horticulture or for such other purposes as the Council may permit. Before the date of acquisition or the date fixed, as the case may be, such buildings may be erected and maintained upon any of the lands specified in the table as are necessary for the purposes for which the lands are permitted to be used, subject to such conditions as the Council may impose as to their removal after such date as aforesaid, or otherwise.

(2) In the case of land reserved for use as a private open space, the Council shall give the owner of the land not less than six months' notice of the date which they have fixed under this clause.

(3) Except as aforesaid no part of the lands specified in the table shall be used for any purpose other than that indicated in the table as the purpose for which the land is reserved, and no buildings other than those required for that purpose shall be erected thereon.

Table.*

Column 1. Indication on map of lands reserved.	Column 2. Uses for which lands are reserved.
Coloured and numbered . .	Public open spaces.
Coloured and numbered . .	Private open spaces.
Coloured and numbered . .	Playing fields.
Coloured and numbered . .	Allotments.
Coloured and numbered . .	Sites for elementary schools.

* This table is intended to be only an illustration.

For the purposes of this clause land reserved for use as a private open space means land reserved for use as a private ground for sports, play, rest or recreation, or as an ornamental garden or pleasure ground.

(4) (*a*) The purposes of this Scheme shall include the provision by the Council of public open spaces and playing fields upon lands reserved for those purposes respectively.

(*b*) The Council may at any time acquire by agreement (*b*) and, if they think fit, convert into a public open space or a playing field any of the lands reserved as private open spaces and numbered on the map.

(5) The Council shall have like powers in regard to any lands reserved as public or private open spaces or playing fields, when acquired by the Council, as if the same were acquired for the purposes of public walks, parks and pleasure grounds under the Public Health Acts or any enactments amending those Acts, and, in addition, the Council shall have power to let for purposes of recreation any land reserved as a playing field when acquired by them, or any land reserved as a private open space when acquired by the Council and converted into a playing field, but no such letting shall be for a term of more than seven years without the consent of the Minister.

(*a*) This clause fills the office of the "lands set apart" clause, a typical example of which is to be found in the Quinton, Harborne, and Edgbaston Scheme, clause 20. See clause 36 as to land reserved for a purpose which it is found is not required, or likely to be required, for that purpose; and see clause 48 as to the appropriation by the Council of any land belonging to them for the purpose for which it is reserved.

(*b*) The following observation is contained in paragraph 32 of the explanatory memorandum: "It is contemplated that the actual acquisition of the lands will normally be carried out under the appropriate public general Acts. In the case, however, of lands required for public parks, walks, and recreation grounds, or for playing fields, their acquisition is specifically declared to be a purpose of the scheme, with the result that the authority will be able to acquire under the procedure of s. 60 of the Act of 1909. In the event of circumstances justifying a local authority in acquiring land before the time is ripe for its conversion to its new use, clause 47 enables them, with the consent of the Minister, to let the land for the time being."

Lands no longer required for the Purposes for which they are reserved.

36. If at any time any land reserved for any purpose under this Part of the Scheme is not required or likely to be required for that purpose, the Minister may, on the application of the Council, by order declare the land no longer to be so reserved (*a*), and thereafter the provisions of this Part of the Scheme shall not apply to the land, but the land shall be subject to the remaining provisions of

this Scheme as if it were included in such zone or zones as may be specified in the order.

Before making an order under this clause, the Minister may, if he thinks fit, require the Council to serve a notice of their application for the order upon such owners as may, in the Minister's opinion, be affected.

(*a*) In paragraph 32 of the explanatory memorandum it is observed: "It is not intended that the power should be used except in abnormal circumstances, and the Minister would not approve an order under the clause unless there were ample justification and the interests of owners would not be prejudiced. An order could not effect an adjustment of any compensation already paid in respect of a reservation, and lands should not be reserved under the clause in the absence of a confident expectation that they will in fact be used for the assigned purpose."

PART V.—GENERAL CONVENIENCE AND AMENITY.

Safety of Traffic.

37. (1) If at any time the Council are of opinion that, for the purpose of securing the safety of traffic, the height of close fences and walls, the growth of hedges, trees and shrubs, and the erection of other obstructions upon any land adjoining any street or the site of any proposed street ought to be regulated, the Council may prescribe a line upon the land, and shall thereupon give notice of the line prescribed to the owner and occupier of the land:

Provided that where a building line is shown on the map or has been fixed by the Council under this Scheme in respect of the street or proposed street, any line prescribed under this clause shall be between that building line and the boundary of the street.

(2) Where a line is prescribed by the Council under this clause, no wall, fence, hedge, tree or shrub or other obstruction (other than temporary structures erected in connection with building operations) shall be erected or be permitted to grow between that line and the boundary of the street or proposed street so as to cause danger to traffic by obscuring the view.

(3) The Council may from time to time vary any line so prescribed, and shall give notice of the variation to the owner and occupier of the land.

(4) No proceedings in respect of any contravention of this clause shall be taken until 14 days after notice has been given to the person in default.

Preservation of Trees.

38. (1) If at any time the Council, having regard to the amenity of any part of the area, are of opinion that any growing tree of a height of more than feet or having a trunk of a girth of more

than feet at a height of feet above the ground (*a*), or any group of such trees, ought to be preserved, the Council may register the tree or group of trees, and shall thereupon notify the owner and occupier of the land upon which the tree or group of trees is growing that the tree or group of trees has been registered, and the register of trees so made shall be open to inspection by persons interested at all reasonable times.

(2) No person shall cut down or wilfully destroy any tree registered by the Council under this clause (*b*), except with the consent of the Council or upon an order of a Court of Summary Jurisdiction under sub-clause (3) of this clause or where the tree has become dangerous :

Provided that if the Council do not notify their refusal to consent to the cutting down or destruction of any registered tree within one month from the date of an application for consent, their consent shall be deemed to have been given.

(3) Any owner or occupier who feels aggrieved by a refusal of the Council to consent to the cutting down or destruction of any registered tree may appeal to a Court of Summary Jurisdiction (*c*), and the Court may, if they think just, make an order authorising the cutting down or destruction of the tree, and may direct by whom and in what manner the costs of the appeal shall be paid, but such order shall not affect any rights as between the owner and occupier.

(4) The Council may delegate their powers under this clause, with or without restriction, to any Committee of the Council (*d*).

(*a*) It is stated in paragraph 35 of the explanatory memorandum that "It was not considered desirable to insert in the clause figures indicating the minimum dimensions of trees to which the clause should apply. A height limit of 30 feet, and a girth limit (which is, of course, an alternative) of 2 feet 6 inches measured at a height of 5 feet are suggested for consideration, but they should not be treated as binding."

(*b*) See model clause 51 (2) as to penalty.

(*c*) As to appeal, see note (*c*) to model clause 10.

(*d*) This is an important precedent, of probable value in a wider application.

Advertisements (*a*).

39. (1) Subject as hereinafter provided no advertisement shall be displayed in such a position or manner as to injure the amenity of any part of the area.

(2) (*a*) Any person may apply to the Council for their consent to the display of an advertisement and consent shall be deemed to have been given if the Council do not notify their refusal to consent within one month from the date of the application.

(*b*) Where, on any such application, the Council refuse their consent, the applicant may, within 21 days from the date of noti-

fication of refusal, appeal to a Court of Summary Jurisdiction (*b*), and the Court may, if they think just, make an order permitting the display of the advertisement to which the application relates, and may direct by whom and in what manner the costs of the appeal shall be paid.

(3) The Council may, if they think fit, authorise generally the display of particular classes of advertisement with or without specifying the positions or manner in which they may be displayed.

(4) The display of an advertisement in accordance with any consent or general authority given by the Council or any order of the Court under this clause shall not be a contravention of this clause.

(5) The provisions of this clause shall be in addition to and not in derogation of the provisions of the Advertisements Regulation Act, 1907.

(6) The Council may delegate their powers under this clause, with or without restriction, to any Committee of the Council (*c*).

(7) For the purposes of this clause the display of an advertisement includes the erection of a hoarding for the purposes of advertising.

(*a*) There are many examples of provisions in respect of advertisements in the existing schemes. A typical clause is to be found in clause 24 of the Luton Town Planning Scheme. Paragraph 36 of the explanatory memorandum states: "In drafting this clause two main considerations were borne in mind: first, that there should be an unqualified right to display any advertisement subject to a prohibition against injury to the amenity of the area; second, that it should be possible for any person who so wishes to have his advertisement 'passed' by the authority with a view to safeguarding himself against any future interference."

(*b*) See note (*c*) to model clause 10.

(*c*) See note (*d*) to model clause 38.

Maintenance of Private Gardens (*a*).

40. If any private garden or private open space (as defined (*b*) in Part IV. of this Scheme) is in such a condition that it injures the amenity of the neighbourhood, the Council may serve a notice on the occupier, or, if there is no occupier, on the owner of the garden or open space, requiring him within a reasonable time to be specified in such notice to take such action as is necessary to secure the amenity, and in default of compliance with such notice the Council may themselves do anything required to be done for that purpose, and may recover the cost (*c*) from the person or persons served with the notice or from any one or more of them.

(*a*) *Cf.* clause 25 of the Luton Town Planning Scheme.

(*b*) See model clause 35 (3).

(*c*) The means of recovery is provided by model clause 53 (1).

PART VI.—MISCELLANEOUS.

Agreements.

41. (1) The Council may enter into agreements for the purpose of carrying this Scheme into effect (*a*), and where any such agreement imposes on the Council a liability for expenditure, the agreement shall state whether or not the Council propose to defray such expenditure or any part thereof by means of a loan.

Where it is stated in the agreement that the Council so propose the agreement shall not become operative unless and until it is approved by the Minister.

(2) The several agreements of which particulars are set out in the Fourth Schedule to this Scheme shall be deemed to have been made by the Council under the powers conferred on them by this clause, and notwithstanding any inconsistency between any of the provisions of any such agreement and this Scheme, the provisions of the agreement shall prevail.

Any other agreements made by the Council after * and before the date of approval of this Scheme in respect of any matter regarding which agreements may be made under this clause shall, so far as they are consistent with the provisions of this scheme, have effect as if they had been made by the Council under the powers conferred on them by this clause.

(3) A person having the powers of a tenant for life within the meaning of the Settled Lands Acts, 1882 to 1922 (*b*), may with the consent of the persons who are trustees of the settlement for the purposes of those Acts or on an order of the Court, enter into any agreement which the Council have power under this clause to make, but nothing in this clause shall prejudice or affect the exercise by any such person of any powers, whether statutory or other, which he could have exercised apart from this clause.

(4) The Council shall have power to enforce any covenant contained in agreements of the kinds referred to in this clause against persons deriving title under the covenantor, notwithstanding that the Council are not in possession of or interested in any land for the benefit of which the covenant was entered into, in the same manner and to the same extent as if they had from the date on which the covenant was entered into been possessed of or interested in such land (*c*).

(*a*) The majority of the existing schemes contain clauses merely empowering the authority to enter into agreements subject to the approval of the Minister of Health. *Cf.*, for example, clause 24 of the Wallasey (St. George's Mount) Town Planning Scheme, No. 2. Clause 73 of the Ruislip-Northwood Scheme is,

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* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

however, nearer the model clause by confirming a table of agreements which might otherwise have been invalidated by the overriding statutory effect of the scheme.

(*b*) See the Settled Land Act, 1882, ss. 2 (5), 2 (6), and 58, and the Settled Land Act, 1884, s. 6.

(*c*) This sub-clause is clearly desirable in view of the decision in *London County Council* v. *Allen*, [1914] 3 K. B. 642, where the Court of Appeal decided that a restrictive covenant concerning land, which covenant does not run with the land at law, cannot be enforced against an owner of such land who derives his title from the covenantor, if the covenantee is not in possession of or interested in any land for the benefit of which the covenant was entered into.

Adjustment of Boundaries of Estates (*a*).

42. (1) For the purpose of securing such adjustment of the boundaries of estates as will facilitate the proper laying out of streets and development of land within the area, the Council may agree with the persons interested in lands for the exchange between those persons of portions of the lands, either with or without payment of money by way of equality of exchange, and may, if they think fit, themselves pay in whole or in part any money required to be paid by way of equality of exchange, and may pay in whole or in part the costs of the exchange.

(2) In default of agreement the Council may by order provide that the lands shall be exchanged on such terms (*a*) as may be specified in the order, but before making the order the Council shall send to each of the persons concerned a draft of the proposed order, and any such person shall be entitled within 14 days after the said draft is sent to him to require the matter to be submitted to the arbitration of a single arbitrator (*b*) to be agreed between the Council and the persons concerned, or, in default of agreement, to be appointed by the Minister.

(3) The arbitrator so appointed shall have power to modify the boundaries of the lands proposed to be exchanged and otherwise to fix the terms upon which the exchange is to be effected, including the payment of money by the Council, but the payment of money by any person concerned other than the Council shall not be made a term of the award without his consent. The provisions of the Arbitration Act, 1889 (*c*), shall apply to an arbitration held under this clause, and the Council and the persons concerned shall be treated as parties to the arbitration.

(4) Upon the issue by the arbitrator of his award the Council may either decide not to proceed with the proposed order or may make the order in the terms of the award. If the Council decide not to proceed, they shall, notwithstanding any direction in the award to the contrary, pay the costs of the persons concerned of and in connection with the arbitration, and the arbitrator shall have power to tax or settle the amount of the costs to be so paid.

(5) An order made by the Council under this clause shall be liable to stamp duty as an instrument effecting an exchange, and shall have the like effect as an Order of Exchange of lands duly made by the Minister of Agriculture and Fisheries under section 147 of the Inclosure Act, 1845 (*d*).

(6) Nothing in this clause shall enable the Council to make (*a*) an order affecting any land to which section 45 of the Act of 1909 applies, or (*b*) an order the terms of which provide for the payment by way of equality of exchange of a sum exceeding one-eighth of the value of the less valuable piece of land.

(7) For the purpose of securing an adjustment of the boundaries of estates as aforesaid, the Council may themselves purchase, subject to the provisions of section 60 of the Act of 1909, any land, and may for that purpose sell or lease the land so purchased in whole or in part.

(*a*) There are many examples of clauses for the adjustment of boundaries in the existing schemes. Clause 10 of the Rochdale (Marland) Town Planning Scheme may be cited as a typical illustration. Sub-clause (*c*) of that clause is as follows: "Any lands or moneys received by any person in or in respect of an adjustment or alteration of boundaries or exchange of lands under the provisions of this clause shall be held by such person, subject to the same trusts (if any), and any lands so received shall also be held subject to the same covenants, restrictions and conditions (if any), as the lands exchanged therefor." *Cf.* sub-clause (5) hereof and note (*d*) below.

(*b*) See note (*c*) to model clause 10.

(*c*) The more important provisions of the Arbitration Act, 1889, are: (i) by s. 1, the submission is irrevocable; (ii) by ss. 7 and 8, the arbitrator has power to administer oaths and the attendance of witnesses may be compelled; (iii) by s. 19, the arbitrator may and, if directed by the Court or a judge, is bound to state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

(*d*) The material words in s. 147 of the Inclosure Act, 1845, are: "and such order of exchange shall be good, valid and effectual in the law to all intents and purposes whatsoever, and shall be in no wise liable to be impeached by reason of any infirmity of estate of the persons on whose application the same shall have been made; and the land taken upon every such exchange shall be and enure to, for, and upon the same uses, trusts, intents, and purposes and subject to the same conditions, charges, and incumbrances, as the lands given on such exchange would have stood limited or been subject to in case such order had not been made."

Modifications in Detail of Scheme (*a*).

43. (1) The Council shall have power from time to time by order to make any minor modification in the site of any proposed street coloured pink on the map (and any consequential modification of a building line) or in the boundary of any zone or of any area reserved for any purpose under Part IV. of this Scheme, but before making any such order they shall give not less than 14 days' notice

of their intention by advertisement in a local newspaper circulating in the area and shall serve a similar notice upon any person who will in their opinion be specially affected by the order.

(2) Any person who feels aggrieved by an order proposed to be made under this clause may appeal to the Minister, and if an appeal is lodged the order shall not take effect pending the decision of the Minister (*b*).

(3) A copy of any order made by the Council under this clause shall be furnished to the Minister as soon as practicable.

(*a*) By virtue of this clause, a slight alteration in the site of a proposed street coloured pink on the map, or one of the other minor modifications specified, may be made. See paragraph 40 of the explanatory memorandum.

(*b*) As to appeal, see note (*c*) to model clause 10.

Retrospective Effect of Scheme (*a*).

44. The provisions of this Scheme (other than the provisions of clause 19 requiring dwelling-houses and residential buildings to be erected on land units) shall apply to all buildings whose erection is commenced after * as if that date had been the date of approval of this Scheme.

(*a*) This is a new and important clause which accords with the object of s. 58 (2) of the Housing, Town Planning, etc. Act, 1909.

Effect of Scheme upon Orders under Section 45 of the Act of 1919 (*a*).

45. Where in pursuance of any special or general order made by the Minister under section 45 of the Act of 1919, the development of any estate or any building operation has been permitted to proceed, no building, street or other work whose erection, lay out or construction is commenced before the date of approval of this Scheme in pursuance of such permission and in accordance with any requirements made as a condition of granting such permission shall be deemed to contravene the provisions of this Scheme.

(*a*) This model clause constitutes an exception to the preceding model clause. For the provisions of s. 45 of the Act of 1919, see p. 170.

Fulfilment of Conditions.

46. (1) Where permission for the erection, laying out or construction of any street or building, or in respect of any other matter is given subject to conditions imposed by the Council under any

* The date of the council's resolution to prepare the scheme, or such other date as may be fixed by the Minister under s. 58 (2) of the Act of 1909.

provision of this Scheme, the conditions shall have effect as if they were provisions of this Scheme (*a*) :

Provided that the Council may at any time waive or modify any such condition with the consent of the owner of the land to which it relates.

(2) The Council shall keep, so as to be available for inspection at all reasonable times by any person interested, a register of any conditions imposed by them under any provision of this Scheme.

(*a*) *Cf.* s. 54 (5) of the Housing, Town Planning, etc. Act, 1909.

Disposal of Lands.

47. (1) The Council may with the consent of the Minister sell or lease or exchange any land acquired by them for any purpose of this Scheme which is not required for that purpose, or may appropriate any such land to some other purpose approved by the Minister.

(2) The Council may with the consent of the Minister lease any land which has been acquired by them for any purpose of this Scheme, but is temporarily not required for that purpose or may apply any such land to any purpose approved by the Minister.

(3) The appropriation or temporary application of land by the Council under this clause shall be subject to any special covenants or agreements affecting the use of the land in their hands.

Appropriation of Lands.

48. (1) Any land belonging to the Council which is reserved for any purpose under clause 35, or, being coloured pink on the map, is reserved for the site of a new street, may, when required for the purpose for which it is reserved, whether or not originally acquired for that purpose, be appropriated therefor.

(2) (*a*) Notwithstanding the provisions of this clause, no land forming part of any common, open space, or allotment within the meaning of section 73 of the Act of 1909 shall be appropriated to any other purpose except where land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public, is given in exchange.

(*b*) Any land forming part of any common, open space or allotment as aforesaid appropriated under this clause shall, by virtue of the appropriation, be discharged from any rights, trusts and incidents to which it was previously subject, and any land given in exchange shall be held subject to the same rights, trusts and incidents as attached to the land appropriated.

Entry on Lands for Inspection, etc.

49. Any members, officers or servants of the Council, on production of the written authority of the Council, shall be admitted into or upon any property within the area at any time between the hours of nine in the forenoon and six in the afternoon for the purpose of any inspection necessary for carrying this Scheme into effect or of enforcing any of its provisions.

If admission for any of the purposes of this clause is refused, any Justice on complaint thereof on oath by any officer of the Council (made after reasonable notice in writing of intention to make the same has been given to the person having custody of the property) may by order under his hand require that person to admit any members, officers and servants of the Council into or upon the property during the hours aforesaid. If no person having such custody can be found, the Justice shall, on oath made before him of that fact, by order under his hand authorise any members, officers and servants of the Council to enter into or upon the property during the hours aforesaid. Any such order made by a Justice shall continue in force until the purposes for which admittance was required have been fulfilled or executed.

Contraventions of Scheme (*a*).

50. (1) Where it appears to the Council that any building or other work is such as to contravene this Scheme, or that in the erection or carrying out of any building or other work any provision of this Scheme has not been complied with, or that any person has failed to execute any work which it is his duty to execute under this Scheme and that delay in the execution of the work would prejudice the efficient operation of this Scheme, the Council may serve a notice containing a copy of this clause and of section 57 of the Act of 1909 upon the person in default, specifying the respects in which the Scheme has been contravened or the works in the execution of which delay has occurred, and stating that the Council intend to exercise their powers under paragraph (*a*) or (*b*) of sub-section (1) of the said section, as the case may be.

(2) At the expiration of one month from the date of the notice the Council may exercise their powers under paragraph (*a*) or (*b*) aforesaid, as the case may be, but, where they have previously been notified by the person served with the notice or by the Minister that a question whether any building or work specified in the notice contravenes the Scheme has been referred to the Minister for decision under sub-section (3) of the said section, the Council shall suspend further action pending the decision of the Minister.

(3) When on any question referred to the Minister under subsection (3) of the said section it is determined that any building or work contravenes this Scheme, or that any provision of this Scheme has not been complied with in the erection or carrying out of any building or other work, the Council, after giving such person as aforesaid notice that, at the expiration of a period specified in the notice (not being less than one month from the date of service of the notice), they intend to exercise their powers under paragraph (*a*) aforesaid, may proceed to remove, pull down, or alter the building or work.

(*a*) Examples of clauses intended to effect the same purposes as model clauses 47, 48, 49, and 50 are to be found in many of the existing schemes—*e.g.* clauses 51, 52, and 53 of the Hunslet (Templenewsam) Town Planning Scheme.

PENALTIES.

51. (1) Any person who commits or knowingly permits any contravention or other breach of the provisions of this Scheme or who neglects or fails to comply with any of those provisions shall be guilty of an offence.

(2) Any person guilty of an offence under this Scheme shall be liable on conviction in any Court of Summary Jurisdiction to a penalty not exceeding Forty Shillings for each offence or in the case of an offence under clause 38 to a penalty not exceeding Ten Pounds for each offence, and in the case of a continuing offence he shall be liable to a further penalty not exceeding Twenty Shillings for each day upon which any offence is continued after notice in writing of the alleged offence has been served on him by the Council or other person instituting the proceedings (*a*).

(3) Section 37 of the Criminal Justice Administration Act, 1914 (which provides a right of appeal in certain events to a Court of Quarter Sessions), shall apply to offences under this Scheme (*b*).

(4) Proceedings may be taken under this clause in addition to any other proceedings or remedy.

(*a*) *Cf.* s. 158 of the Public Health Act, 1875. In the model clause there is no extension of the period over which the offence may be deemed to continue beyond the limit of six months imposed by s. 11 of the Summary Jurisdiction Act, 1848. *Cf. Reay* v. *Gateshead* (*Mayor, etc., of*) (1886), 50 J. P. 805; 55 L. T. (N.S.) 92; 34 W. R. 682.

(*b*) Sub-section (1) of s. 37 of the Criminal Justice Administration Act, 1914, is as follows: "Any person aggrieved by any conviction of a court of summary jurisdiction in respect of any offence, who did not plead guilty or admit the truth of the information, may appeal from the conviction in manner provided by the Summary Jurisdiction Acts to a court of quarter sessions." "Court of Summary Jurisdiction" and "Court of Quarter Sessions" are defined in s. 13 of the Interpretation Act, 1889. *Cf.* (*e.g.*) clause 34 of the Birmingham (North Yardley and Stechford) Town Planning Scheme.

Gifts (*a*).

52. The Council may accept a donation of land or money or other property for the furtherance of any object of this Scheme and it shall not be necessary to enrol any assurance with respect to any such property under the Mortmain and Charitable Uses Act, 1888.

(*a*) A clause of this kind—although the subject is expressly included in item 14 of the Fourth Schedule to the Act of 1909 as a matter to be dealt with by general provisions—is rare in existing schemes. It is exemplified only by clause 71 of the Ruislip-Northwood Scheme and clause 55 of the Hunslet (Templenewsam) Scheme.

Recovery of Expenses (*a*).

53. (1) All expenses (other than expenses recoverable under *the Private Street Works Act*, 1892 [*section* 150 *of the Public Health Act*, 1875] * as applied by this Scheme) incurred by the Council under this Scheme for the repayment of which any person is made liable under this Scheme or the Act of 1909 or by any agreement with the Council under this Scheme shall be recoverable summarily as a civil debt, and shall, until payment, be a charge on the inheritance of the land in respect of which they have been incurred.

(2) Where the value of land is increased by the making of this Scheme, the sum due to the Council in respect of that increase shall, until payment, be a charge on the inheritance of the land the value of which has been increased.

(3) The Council shall have in respect of expenses which are charged on land by this clause all the same powers and remedies under the Conveyancing and Law of Property Acts, 1881 to 1922, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver (*b*).

(*a*) *Cf.* (*e.g.*) clause 34 of the Luton Town Planning Scheme.
(*b*) See ss. 19 *et seq.* of the Conveyancing and Law of Property Act, 1881.

Application of Moneys received by Council.

54. All amounts recovered by the Council under section 58 of the Act of 1909 in respect of the increase in value of property or received from owners as contributions towards the cost of street construction or from the sale of surplus lands or from any other source in connection with this Scheme shall be applied in repayment of moneys borrowed under the Act of 1909 for purposes of this Scheme or to such other purposes as may be approved by the Minister.

* See note at the head of Part II.

Suspension and Application of Acts and Bye-laws.

55. The provisions of any statutory enactment, order, bye-law or regulations which are in operation in the area shall, in relation to the matters dealt with in this Scheme, have effect subject to this Scheme, and in so far as inconsistent with the provisions of this Scheme shall be suspended (*a*) :

Provided that—

(*a*) nothing in Part II. of this Scheme shall authorise the construction or reconstruction of a street of a less width than is required by, or otherwise in a manner contrary to, the bye-laws, except to the extent expressly authorised by that Part of the Scheme;

(*b*) nothing in Part III. of this Scheme shall entitle the Council to authorise the erection of a building in a manner contravening the bye-laws or the provisions of any general Act.

(*a*) The course followed in previous schemes has been to suspend certain specified enactments (*e.g.* the Highway Act, 1835, the Public Health (Buildings in Streets) Act, 1888, or s. 41 of the Public Health Acts (Amendment) Act, 1890) altogether, adding a general clause to suspend all other enactments, bye-laws, and regulations "so far as necessary for the proper carrying out of this scheme"—see clause 30 (*e.g.*) of the Birmingham (North Yardley and Stechford) Town Planning Scheme.

Appeals.

56. (1) Where a right of appeal to the Minister is provided by this Scheme—

(i) the appeal shall, if made against any decision, refusal, specification or declaration of the Council, or against the imposition of any conditions by the Council, be made within 14 days from the date of service of notice thereof;

(ii) the appeal shall, if made against any proposal of the Council to make an order under clause 43, be made within 14 days from the date of advertisement or service of notice of the proposal;

(iii) the appeal shall not, if made against any neglect of the Council, be made until one month after notice of intention to appeal has been given to the Council:

Provided that the Minister may on the application of any person desiring to appeal extend the time for giving notice of appeal prescribed by paragraphs (i) and (ii) of this sub-clause, and may so extend the time although the application is not made until after the expiration of the time so prescribed.

(2) An appeal shall be made in writing (*a*) and shall contain a concise statement of the facts and contentions on which the appellant relies.

(3) The Minister may on any appeal make such order in the matter as he thinks equitable, and any order so made shall be binding and conclusive on all parties.

(4) Where the Minister does not for the purpose of determining an appeal appoint an arbitrator to act for him in pursuance of his powers under section 30 of the Regulation of Railways Act, 1868, as applied by section 62 of the Act of 1909 (*b*), the costs of the appeal, including the costs of any public local inquiry held in connection therewith, shall be in the discretion of the Minister, who may direct to and by whom and in what manner those costs or any part thereof shall be paid and may tax or settle the amount of costs to be so paid or any part thereof.

(*a*) "Writing" is defined by s. 20 of the Interpretation Act, 1889, as including "printing, lithography, photography, and other modes of representing or reproducing words in a visible form."

(*b*) Section 62 of the Housing, Town Planning, etc. Act, 1909, enables the Minister, in general, to determine matters at his option as arbitrator or otherwise. This section will be found fully dealt with at pp. 131–135, *ante*. Section 30 of the Regulation of Railways Act, 1868, is set out at p. 132.

Claims for Compensation and Betterment (*a*).

57. Claims under section 58 of the Act of 1909 for compensation or in respect of any increase in the value of property due to the making of this Scheme, shall be made within 12 months from the date of approval of this Scheme:

Provided that in the event of such a claim arising out of the exercise by the Council of any power conferred on them under clauses 6 (2), 10, 33, 37, or 38, the claim may be made at any time not later than 12 months after the date (*b*) on which notice is given by the Council to the claimant of the exercise by them of such power or of their intention to exercise such power, as the case may be, or, where an appeal lies and is made to the Minister against the exercise by the Council of such power, the date on which notice is given to the claimant of the Minister's decision on the appeal.

(*a*) Paragraph 14 of the explanatory memorandum has the following observation: "Claims for compensation in respect of limitation of the use of land or other injurious affection, if any, arising immediately upon the making of the scheme, should be settled as soon as possible after the scheme is approved, and in the compensation and betterment clause (clause 57) it is provided that such claims shall be made within twelve months after the date of approval. Where, however, the authority exercise the right of entry for the construction of streets, instead of purchasing street sites before undertaking works thereon, the injurious affection (if any) arising out of the actual entry and disturbance

might not be known until the right was exercised, and it is therefore considered that owners should not be precluded from making such claims within a fixed period after the actual exercise of the right. The time for claims in respect of the authority's requirements in connection with streets not shown on the map is similarly extended."

(*b*) It will be observed, as stated in paragraph 44 of the memorandum, that the effect of the proviso is that the period within which certain classes of claims may be made is "extended." To have postponed the claims would have been *ultra vires*, having regard to the terms of s. 58 (1) of the Act of 1909.

See further upon the language of clause 57 at pp. 112 and 113, *ante*.

A provision to effect the objects of the clause is to be found in every existing scheme.

Charging Orders (*a*).

58. (1) Where any owner has paid any sum required to be paid under section 58 of the Act, in respect of the increase in value of his land by reason of the operation of this Scheme, or where any other person has advanced money for that purpose, such owner or person may apply to the Council for a Charging Order, and on production of the receipt for the sum so paid, the Council shall make an order charging on the land an annuity to repay the amount.

(2) The annuity charged shall be such annual sum as will repay the said amount by equal instalments of principal and interest combined in a period of 30 years, interest being calculated at the same rate as that which, at the date when the charge is made, is the rate of interest charged on loans granted by the Public Works Loan Commissioners to Local Authorities for the same period, and shall commence from the date of the order, and be payable to the person named in such order, his executors, administrators or assigns.

(3) Any such annuity may be recovered by the person for the time being entitled to it by the same means and in like manner in all respects as if it were a rent charge granted by deed out of the land by the owner thereof.

(4) A charge made under this clause shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, as amended by any subsequent enactment, and may be registered accordingly (*b*).

(5) The provisions of section 37 of the Housing of the Working Classes Act, 1890, as amended by the Act of 1909 (other than subsection (4) of that section), shall apply to charges created under this clause (*c*).

(6) Charging orders and transfers of charges may be made under this clause according to the Forms A and B in the Fifth Schedule to this Scheme or in any other convenient form.

(7) Any owner or other person interested in land on which an annuity has been charged under this clause may at any time redeem the annuity on payment to the person entitled to the annuity of such

sum as may be agreed or in default of agreement determined by the Minister.

(*a*) These provisions as to charging orders appear to be modelled upon ss. 36 and 37 of the Housing of the Working Classes Act, 1890, and are new to town planning.

(*b*) The subject is dealt with by ss. 10 to 14 of the Land Charges Registration and Searches Act, 1888. Section 12 protects a purchaser against unregistered charges.

(*c*) Section 37 of the Act of 1890 deals with the priority, evidence, and transfer of the charge. Sub-section (4) relates to the deposit of the order with the clerk of the peace of the county. Section 37 was amended by ss. 20 and 75 and Sched. VI. of the Act of 1909.

Registration.

59. Any person may, in consideration of such annual payment not exceeding £1 as the Council may fix, require the Council to register his name, and the Council shall thereafter serve upon that person at the last address notified by him to the Council a copy of every advertisement which, under the provisions of this Scheme, the Council are required to insert in some local newspaper circulatiug in the area.

The Map.

60. The Council shall permit any person interested to inspect at any reasonable time the duplicate of the map deposited in the offices of the Clerk to the Council.

Service of Notices.

61. Notices or other documents required or authorised to be served under this Scheme shall be in writing and may be served :—

(*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or

(*b*) by leaving the same at the usual or last known place of abode or business of such person as aforesaid ; or

(*c*) by post as a registered letter addressed to the usual or last known place of abode of such person ; or

(*d*) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at the office of the authority or body or, in the case of the company, at the registered office, with some person employed there, or by post as a registered letter addressed to such clerk or secretary at that office ;

Provided that if the owner of any land is not known to, and after reasonable inquiry cannot be ascertained by, the Council, the notice may be served by leaving it, addressed to "the owner," with some occupier of the land, or if there is no occupier, by affixing it to some conspicuous part of the land.

Consent of Council to be in Writing.

62. In all cases where the consent of the Council is required to be given under this Scheme such consent shall be in writing (*a*), and shall be either under the hand of the Clerk or of some person duly authorised to act in place of the Clerk or under the seal of the Council.

(*a*) See note (*a*) to model clause 56.

Inquiries by Minister.

63. Section 85 of the Housing of the Working Classes Act, 1890, as amended by the Act of 1909, shall apply for any purposes of this Scheme as it applies for the purpose of the execution of the powers and duties of the Minister under the former Act (*a*).

(*a*) Section 85 of the Act of 1890 provides generally as to local inquiries, and as to the payment of the costs involved. The section also applies ss. 293 to 296 and s. 298 of the Public Health Act, 1875, for the purposes of such inquiries and orders of the Minister of Health. The provisions of s. 85 of the Housing of the Working Classes Act, 1890, as amended, and the above sections of the Act of 1875, as so applied, will be found fully dealt with at pp. 135–138, *ante*. These provisions are applied for the purposes of Part II. of the Housing, Town Planning, etc. Act, 1909.

For the Protection of the Postmaster-General (*a*).

64. (1) Nothing in this Scheme shall affect the application of section 7 of the Telegraph Act, 1878, to any alteration in any telegraphic line of the Postmaster-General which may be involved in the exercise of powers conferred by the Scheme.

(2) Notwithstanding the stopping up or diversion of any highway or footpath under this Scheme, the Postmaster-General shall continue to have the same powers and rights in regard to any telegraphic line which remains in, under, upon, over, along or across the site of the said highway or footpath as if the same had continued to be a highway or footpath:

Provided that if the Council or the person in whom the soil of the said highway or footpath is vested desires to alter such telegraphic line, the enactments of section 7 of the said Act shall thereupon apply in all respects as though the Council or the said person (as the case may be) were undertakers within the meaning of that Act.

(3) Expressions in this clause have the same meaning as in the Telegraph Act, 1878.

(*a*) Paragraph 45 of the explanatory memorandum is as follows: "This clause has been drafted in consultation with the Postmaster-General, and the Minister considers that it should be inserted in all town planning schemes. The clause is intended to meet the following points:—

"(i) Section 7 of the Telegraph Act, 1878, lays down the procedure to be followed where the removal or alteration of a telegraphic line is made necessary by the execution of street works, etc., under special statutory powers, but the section is so worded that it is applicable only where 'provision is not otherwise made by enactment.' Accordingly sub-clause (1) has been inserted to ensure that the scheme shall not be regarded as making alternative provision and so ousting the Telegraph Act.

"(ii) Under the Telegraph Acts a telegraph line laid upon private land can at any time be required to be removed by the owner of the land at the Postmaster-General's expense. The protection given by sub-clause (2) is therefore needed in order that, where a highway is stopped up and the land ceases to be a highway, the Postmaster-General shall not be liable for the removal of telegraph lines at his own cost."

Duration of Scheme and Short Title.

65. (1) This Scheme shall commence (*a*) on the day on which it is approved by the Minister, and shall, subject to any variations made by any subsequent Scheme, continue in operation until revoked.

(2) This Scheme may be cited as "The Town Planning Scheme, 19—."

(*a*) By the "commencement" of the Scheme is meant the time at which it comes into operation (see clause 1, p. 209; Interpretation Act, 1889, s. 36).

FIRST SCHEDULE.

Type.	Maximum length of street.	Minimum width of street.	Minimum width of carriage-way.	Minimum No. of footways.	Minimum width of each footway.	Conditions as to junction with other streets.	Conditions as to provisions of turning spaces.
	1500 ft.	* ft.	16 ft.	2 (1, if street built up to on one side only.)	4 ft. 6 ins.	The street shall communicate at each end with a street of a minimum width of * feet with a carriage-way of a minimum width of * feet, or at one end with such a street and at the other end with a street of Type E or with a highway having a carriage-way existing at the date of the approval of this scheme. Provided that where the street communicates at one end with a street of Type E, its length together with the length of the street of Type E shall not exceed 700 feet, but it may communicate at the other end with a street of Type A.	If the street exceeds 500 ft. in length a turning space (or turning spaces) shall be provided at a distance not exceeding 500 feet apart or from either end of the street.
B.	750 ft.	30 ft.	16 ft.	1	4 ft. 6 ins.	The street shall communicate at each end with a street of Type A or with a street of a minimum width of * feet with a carriage-way of a minimum width of * feet, or at one end with a street of either of such types and at the other end with a street of Type E or a highway having a carriage-way existing at the date of the approval of this scheme. Provided that where the street communicates at one end with a street of Type E, its length together with the length of the street of Type E shall not exceed 700 feet, but it may communicate at the other end with a street of Type A or of Type B.	Ditto.
C.	450 ft. (600 ft. if the minimum width of the carriage-way is 16 ft.)	24 ft.	14 ft.	—	—	The street shall communicate at one end with a street of Type A or with a street of a minimum width of * feet with a carriage-way of a minimum width of * feet or with a highway having a carriage-way existing at the date of the approval of this scheme, and shall communicate with no other street.	A turning space shall be constructed at the other end of the street.
D.	200 ft.	16 ft.	8 ft.	—	—	The street shall communicate at one end with a street of Type A or of Type B or with a street of a minimum width of * feet with a carriage-way of a minimum width of * feet or with a highway having a carriage-way existing at the date of the approval of this scheme, and shall communicate with no other street.	Ditto.

Type.	Maximum length of street.	Minimum width of street.	Minimum width of carriage-way.	Special conditions.	Conditions as to junction with other streets.	Conditions as to construction of surface of street.
E. Applicable only to streets intended to give access solely to buildings forming three sides of a quadrangle or arranged in some other similar manner so as to front on to an open space.	500 ft.	14 ft.	10 ft.	All the buildings to which the street gives access shall be on the same side of the street. No footway need be provided.	The street shall communicate at each end with a street of Type A or of Type B, or with a street of a minimum width of * feet with a carriage-way of a minimum width of * feet, or with a highway having a carriage-way existing at the date of the approval of this scheme, and shall communicate with no other street.	Notwithstanding any provisions of the bye-laws to the contrary, the whole surface of the carriage-way may be so constructed as to fall to a channel at one side of the carriage-way, such fall being calculated at a minimum rate of half an inch for every foot of the width of the carriage-way.

* The ordinary bye-law width.

SECOND SCHEDULE.

1.	2.
Number on the map of highway to be diverted or stopped up.	Number on the map of new street.

THIRD SCHEDULE.

LIST OF INDUSTRIES.

FOURTH SCHEDULE.

Date of Agreement.	Parties.	Description of lands.

FIFTH SCHEDULE.

FORM A.

CHARGING ORDER.

The being the Responsible Authority under the Town Planning Scheme, 19 , made under Part II. of the Housing, Town Planning, etc. Act, 1909, do by this Order under their common seal charge the lands and premises mentioned in the Schedule hereto with the payment to of of the sum of pounds payable yearly (half-yearly) on the day of for the term of years, and being in consideration of a payment of pounds made by under section 58 (3) of the said Act.

Schedule of Lands Charged.

Name, etc., of lands.	Owner.	Occupier.	Parish.	County.	Total acreage.

FORM B.

Form of Assignment of Charge. To be endorsed on Charging Order.

Dated the day of

I, the within named in pursuance of the Housing, Town Planning, etc. Act, 1909, and of the consideration of pounds, this day paid to me, hereby assign to the within-mentioned charge.

Signed

APPENDIX F.

TABLE SUMMARISING EFFECT OF EXISTING SCHEMES AND MODEL CLAUSES.

For convenience, a table is appended on p. 265 showing certain items in the fourth schedule of the Act of 1909 (as amended by section 48 and the third schedule of the Act of 1919) (see p. 166), being the subjects of special provisions under section 55 (2) of the Act of 1909, against which are set the numbers of the clauses in the existing schemes and model clauses designed respectively to deal with those items. This is intended to present to the eye the general direction hitherto taken in approved schemes.

Items (4), (6), (7), (8), (9), (17), and (18) on p. 166, have not yet been dealt with in any scheme.

The proper subjects for special provisions under section 55 (2) of the Act of 1909 have, so far as identification of the area and the responsible authority are concerned, been included in the table under the head "Definitions"; while the suspension of enactments is included under the head "Application and Suspension of Enactments."

(*For explanation of this table see p. 264.*)

Subject-matter of Clause.	Quinton, Harborne, and Edgbaston.	East Birmingham.	Rutslip-Northwood.	Rochdale (Marland).	North Bromsgrove (Rubery).	Chesterfield (Chester Street Area).	East Birmingham Amendment.	Birmingham (North Yardley and Stechford).	Otley.	Leeds (Buckingham House).	Hunslet (Templenewsam).	Wallasey (St. George's Mount).	Luton.	Model clauses.
Streets, etc.	4–16	4–16	4–26 and 28	4–9	4–22	4–18	4–7	4–17	4–21	4–7	4–22 and 24	4–7	4–16	4–16
Buildings, etc.	17–19	17–19	36–56, 58 and 59	11–21	23–31	19–25	8 and 9	18–20	22–26 and 32	8–14	29–45	9–17	17–19	17–34
Open spaces	20	21	29–35	19 and 20	—	—	—	—	34	—	25–28	8	22	35
Sewerage, etc.	—	—	57, 65, and 66	22 and 23	36	—	—	—	31 and 32	—	46	—	21	—
Dealings with land	23 (d) and 30	25 (d) and 32	67	10 (d)	37 (d) and 44	28 (b) and 35	—	24 (d) and 31	33 (d) and 41	—	23 (d) and 51	—	33	42 (7), 47, and 48
Entry for inspection	25	27	68	36	39	30	—	26	36	17	52	34	28	49
Demolition of obstructions	27	20 and 29	69 and 79	25	26 and 41	32	—	28	38	19	53 and 63	29 and 35	30	50
Agreements	28	30	72 and 73	28	42	33	—	29	39	22	56 and 57	24	31	41
Acceptance of gifts	—	—	71	—	—	—	—	—	—	—	55	—	—	52
Application and suspension of enactments	29	31	76	31	43	34	—	30	40	24	60	27	32	34 and 55
Supplemental and special matters. Lands	20	21	29	—	32	26	—	21	27	—	25	8	—	35 and 36
Zoning	21	22	—	13 and 14	33	—	—	18	—	8	41 and 43	9	17 and 20	19–29
Amenities	13, 14, 21, and 22	13, 14, 23, and 24	24, 25, and 60–64	12–14 and 24	34 and 35	27	—	22 and 23	28–30	15 and 16	42 and 47–50	18–23	22–25	37–40
Boundaries	23	25	—	10	37	28	—	24	—	—	23	—	26	15
Claims	24	26	80	26	38	29	10	25	35	23	64	30	27	57
Penalties	26	28	70	29	40	31	—	27	37	18	54	36	29	51
Appeals	32 and 33	34 and 35	77 and 78	32 and 33	46 and 47	37 and 38	—	33 and 34	43 and 44	—	61 and 62	37 and 38	35 and 36	56
Definitions	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–3	1–4 and 17
General	34–38	36–42	75 and 81–88	30, 34, 35, 37, and 38	48–53	39–44	11–13	35–42	45–51	20 and 25–27	59 and 64–70	25, 26, 28, 32, 33, and 39	37–43	43–46, 54, and 59–65
Betterment charged on land	31	33	74	—	45	36	—	32	42	21	58	31	34	53 and 58

APPENDIX G.

NOTICES OF CLAIM UNDER SECTION 58 OF THE HOUSING, TOWN PLANNING, ETC. ACT, 1909.

No forms of claim are prescribed for the purpose of making claims under section 58 of the Housing, Town Planning, etc. Act, 1909, for compensation in respect of property injuriously affected by the making of a town planning scheme or on account of betterment where the value of property is increased by the making of such a scheme. It would, however, appear that a notice of claim should be given to comply with s. 5 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919, that is, the notice should state the exact nature of the interest of the claimant and give details of the amounts claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.

The following forms may prove of service :—

(I.)

NOTICE OF CLAIM FOR COMPENSATION.

TAKE NOTICE that I of etc. , under section 58 of the Housing, Town Planning, etc. Act, 1909, as amended by sections 45 and 48 of the Housing, Town Planning, etc. Act, 1919, and section 18 of the Housing, etc. Act, 1923, claim compensation in respect of my property being injuriously affected by the making of the Town Planning Scheme.

My said property is as follows : [Description]

My said property is injuriously affected by the making of the said town planning scheme as follows :—

(*a*) the said freehold estate * is affected by—

(i) the position of the main thoroughfare numbered under clause ;

(ii) the liability of the cottage and grounds,* No. , Street, to be charged with contribution to the expense of widening Street aforesaid under clause ;

(iii) the power of the responsible authority to determine the position of subsidiary roads on the building plot* adjoining under clause ;

(iv) the closing of the public footpath* leading from to under clause ;

(*b*) the said dwelling-houses* are affected by—

(i) the widening* of Street aforesaid to feet under clause ; etc., etc.

In respect of the said injurious affection I claim the sum of £ made up as follows :—

[State the amounts claimed under each head, showing how the same are calculated.]

(*Signature*)

Dated this day of 19 .

To the * Mayor, Aldermen, and Burgesses of the Borough of being the responsible authority under the Town Planning Scheme.

* The descriptions used are illustrative only.

(II.)

NOTICE OF CLAIM IN RESPECT OF BETTERMENT.

TAKE NOTICE that the *, being the responsible authority under the Town Planning Scheme, claim, under section 58 of the Housing, Town Planning, etc. Act, 1909, as amended by sections 45 and 48 of the Housing, Town Planning, etc. Act, 1919, and section 18 of the Housing, etc. Act, 1923, one-half of the amount by which your property—namely [Description of Property]—has been increased in value by the making of the said scheme.

This claim is based on the following grounds †:—

1. That the new streets (including widenings) to be constructed under the scheme will open up your land by improving or reducing the cost of access to it, and by creating or improving building frontage.

2. That the new sewers to be provided under the scheme will facilitate the development of your land or some parts of it for building purposes, or reduce the cost of developing such land.

3. That the scheme secures to you a relatively cheaper means than was available to you before, of constructing roads on your land.

4. That the provision under the scheme of main traffic routes will reduce the traffic on other roads (whether existing or future), and thereby reduce the cost to you of maintaining such other roads or some of them and will increase the value of your land.

5. That the limitation imposed on the number of houses that may be erected per acre in the area of the scheme will hasten development of your land, as such land will be required for building at an earlier time than would have been the case without such limitation; and that such limitation will otherwise increase the value of your land.

6. That the scheme secures the fair and proper development of adjoining land and affords protection to and means of improving your land and its amenities, advantages which were not enjoyed before the scheme was made.

7. That so much of your land as lies adjacent or near to land required for parks and public open spaces is thereby enhanced in value.

8. That you can obtain under the scheme the adjustment of such of the boundaries of your land as are inconvenient.

9. That the abolition of highways or footpaths over your land will enhance its value for building and reduce damage by trespass.

10. That by allocating portions of the area of the scheme for specific purposes the values of such portions are increased.

The said increase in value amounts to the sum of £ which is made up as follows:—

[State how much of this sum is attributable to each head and how the same is calculated.]

Dated this day of 19 .

(*Signature*)

Clerk to the said *

To, etc.

---

* Insert name of responsible authority.

† The grounds given are illustrative only.

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THE END

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